Supreme Court, U.S.
FILED
MAY 6 1999
OFFICE OF THE CLERK

No. 98-1334

In The Supreme Court of the United States

October Term, 1998

FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, et al.,

Petitioners,

vs.

CYRIL BRADSHAW, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

RODNEY R. PARKER
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Petitioners
10 Exchange Place, 11th Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

May 5, 1999

TABLE OF CONTENTS

I. PLAINTIFFS' ERRONEOUS ARGUMENTS EXEMPLIFY CURRENT CONFUSION ABOUT THE NEUTRAL PRINCIPLES EXCEPTION TO THE SETTLED CONSTITUTIONAL RULE AGAINST JUDICIAL INTERPRETATION OF RELIGIOUS DOCTRINE 1

A. *"Neutral Principles of Law" Is Not Synonymous with "Religiously Neutral, Generally Applicable Laws."* 1

B. *The Application of an Equitable Remedy in a Church Property Dispute Unavoidably Violates the Neutral Principles Exception* 3

II. THE ACCOUNTING ORDERED BY THE UTAH SUPREME COURT WILL NECESSARILY REQUIRE JUDICIAL RULINGS ON THE MERITS OF FLDS BELIEFS AND PRACTICES 6

III. THIS CASE PRESENTS AN APPROPRIATE FACTUAL SETTING FOR DISCUSSION AND CLARIFICATION OF THE "NEUTRAL PRINCIPLES" DOCTRINE 7

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

Employment Division v. Smith, 494 U.S. 872 (1990) 1, 2, 4

Jones v. Wolf, 443 U.S. 595 (1979) 1-2, 4, 5

Lyng v. Northwest Indian Cemetery Protection Ass'n, 485 U.S. 439 (1988) 3

Maryland & Va. Churches v. Sharpsburg Church, 396 U.S. 367 (1970) 2

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) 5

I. PLAINTIFFS' ERRONEOUS ARGUMENTS EXEMPLIFY CURRENT CONFUSION ABOUT THE NEUTRAL PRINCIPLES EXCEPTION TO THE SETTLED CONSTITUTIONAL RULE AGAINST JUDICIAL INTERPRETATION OF RELIGIOUS DOCTRINE.

The misstatement and misapplication of the neutral principles doctrine in this case are typical of errors repeatedly committed by lower courts attempting to understand and apply this doctrine in light of the constitutional prohibition on judicial interpretation of religious doctrine.

A. *"Neutral Principles of Law" Is Not Synonymous with "Religiously Neutral, Generally Applicable Laws."*

Plaintiffs argue that the trial court applied "neutral principles of law" because it relied upon a "religiously neutral, generally applicable law." This confusion of precedent has become common in the lower courts since this Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). *See* cases cited in Petition, at 20 n.13. Without any analysis or authority, these cases assume that a law which is "religiously neutral" and "generally applicable" under *Smith* is therefore a "neutral principle of law" under *Jones v. Wolf*, 443 U.S. 595 (1979).

The trial court here has repeated this error. Concluding that the law of unjust enrichment is a neutral and general law, the trial court determined that it could apply this law to the property dispute between plaintiffs and petitioners so long as it excluded religious questions from the equitable balance.

The "neutral principles of law" exception to the rule against judicial interpretation of religious doctrine, however, only allows judges to determine ownership rights in disputed

church property by reference to legal documents that commonly evidence title, such as deeds, local church charters, general church constitutions, and state statutes. *Jones*, 443 U.S. at 604; *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970).

Had the trial court followed the neutral principles exception in this case, it would have held for petitioners, because the trial court itself found that the UEP trust documents and all other evidence clearly and unambiguously showed that title to trust property and all improvements thereon was held by the trust, which gave to the trustees exclusive authority to manage and deal with such property and improvements. *See* Appendix A to Petition, at 3A-11A.

By going beyond the objective meaning of the relevant documents and awarding life estates to the plaintiffs on a theory of unjust enrichment, the trial court violated the neutral principles exception to the rule against judicial interpretation of religious doctrine. Even if it is assumed that the law of unjust enrichment is a neutral and general law within the meaning of *Smith*, it is neither neutral nor a principle of law within the meaning of *Jones*. Unjust enrichment is not a rule of law at all, but a principle of equity which requires a balancing of considerations of justice advanced by each side. When those considerations of justice include religious beliefs or practices, the equitable balance cannot be accomplished without assigning weight (or lack thereof) to these beliefs or practices. This, in turn, would require that courts rule on the meaning and importance of these beliefs and practices, in violation of the constitutional rule against judicial interpretation of religious doctrine. Yet, if the court decides to avoid interpreting religious doctrine by excluding the meaning and importance of religious beliefs and practices from the equitable balance, the balance is no

longer equitable. Instead, it has been skewed against the party advancing the religious beliefs and practices, and thus is not neutral.

In this case, one of the important equitable considerations was the corrosive effect on the FLDS Church's efforts to build a community of faith that would result from dissidents living in the midst of the church on the consecrated property of the UEP. Had the trial court relied on this consideration, it would have had to make a judgment about the content and requirements of FLDS theology, and the extent to which allowing the dissidents to remain on UEP property would have affected the ability of the church and its members to create the "Kingdom of God on Earth" as required by their religion. By ignoring this crucial consideration under the guise of religious "neutrality" the trial court biased the balance of equities against the church and the UEP. *See Lyng v. Northwest Indian Cemetery Protection Ass'n*, 485 U.S. 439, 449-50 (1988).

Petitioners do not argue that they are above the law, but only that religious judgment is inherent in the application of equitable remedies to religious property disputes. The trial court should either have confirmed the UEP's title to the property and improvements under the neutral principles exception, or abstained from rendering any decision at all in accordance with the constitutional prohibition on interpreting religious doctrine.

B. *The Application of an Equitable Remedy in a Church Property Dispute Unavoidably Violates the Neutral Principles Exception.*

At no point in their petition do petitioners claim that the remedy awarded by the trial court burdens their rights under

the free exercise clause of the First Amendment. Petitioners argue only that (i) the use of equitable remedies in church property disputes necessarily violates either the constitutional prohibition on judicial interpretation of religious doctrine or the neutral principles exception thereto, Petition, at 11-19; (ii) a neutral and general law cannot be applied to resolve a church property dispute when such application would entail judicial interpretation or valuation of religious doctrine, *id.* at 19-22; and (iii) the establishment clause requires that courts refrain from applying neutral and general laws to church property disputes when refraining will reduce church-state entanglements, *id.* at 22-28. Whether or not the trial court's remedy burdened FLDS free exercise rights is irrelevant.

Nevertheless, the fact that the trial court felt compelled to rule that its equitable remedy did not burden FLDS beliefs betrays the court's entanglement in questions of religious doctrine. The trial court's reference to free exercise burdens is yet another telltale symptom of the confusion that exists between the *Jones* and *Smith* rules.

In *Smith*, this Court held that the free exercise clause did not grant relief to persons whose religious beliefs or practices were burdened by religiously neutral, generally applicable laws. *Jones*, by contrast, is not about free exercise burdens at all; rather, *Jones* seeks to delineate when secular courts are competent to resolve disputes over the ownership of church property. In this case, the focus is not on whether the trial court's remedy burdened the free exercise rights of members of the FLDS church, but rather whether this remedy involved the trial court in constitutionally prohibited interpretation and evaluation of FLDS doctrine.

The trial court's effort to show that its remedy did not burden the religious beliefs of the FLDS Church and its members confirms the extent to which the trial court entangled itself in determinations and interpretations of FLDS doctrine. Ignoring the obvious distinction between friendly strangers and hostile dissidents, the trial court held that allowing dissidents to remain on UEP property in the midst of the FLDS community would not impede the efforts of the church and its members to live their religion, because the church had occasionally allowed nonmembers to live on UEP property. *See* Appendix B to Petition, at 3B-5B. In so doing, the trial court substituted its judgment for that of church leaders about what FLDS doctrine requires for the creation and maintenance of a consecrated community of faith. Not only had this Court prohibited this kind of judgment in its church property decisions,[1] this Court's rulings under the free exercise clause likewise emphasize that this is precisely the sort of evaluation that courts are not competent to render.[2]

---

[1] *See, e.g., Jones*, 443 U.S. at 602 ("[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization."); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969) ("First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.").

[2] *See Smith*, 494 U.S. at 887 ("What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is 'central' to his personal faith? . . . Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.").

II. THE ACCOUNTING ORDERED BY THE UTAH SUPREME COURT WILL NECESSARILY REQUIRE JUDICIAL RULINGS ON THE MERITS OF FLDS BELIEFS AND PRACTICES.

The accounting ordered by the Utah Supreme Court illustrates yet again how misuse of the *Smith* rule entangles courts in the interpretation of religious under the guise of neutrality.

Respondents maintain that because the UEP trust document is susceptible of secular interpretation, this Court should allow the trial court to attempt to apply the document in a secular manner in connection with the accounting ordered by the Utah Supreme Court.

The very idea that the trial court might somehow conduct an accounting of the trustees' administration of the UEP without ruling on questions of FLDS doctrine is absurd. The trustees are all leaders of the FLDS Church, tasked with managing the trust to lead the adherents toward the religious United Order. The trial court itself expressly found:

> [Church leaders] often preached that the purpose of the UEP was to advance the group toward the United Order, which was an economic concept taught in the scriptures held sacred by the Work. To accomplish this goal the UEP was intended to provide a means for all real property of the religious group to be held in common and for its use to be managed by a benevolent and inspired group of God fearing leaders.
>
> . . .

> The leadership of the Work also taught that the UEP constituted a communal effort to build up the Kingdom of God on Earth by developing a community for the adherents to occupy.

Appendix A to Petition, at 5A-6A.

An accounting will require judicial evaluation of whether actions by the trustees in dealing with UEP property were reasonable in light of the duties (including the fiduciary duties) owed by the trustees. This judgment of reasonableness will have to be made in light of the FLDS beliefs that were the reason for formation of the trust in the first place. Indeed, to evaluate the trustees' trust management decisions as other than an effort to put into practice their religious belief in the United Order would be grossly unfair to them.

The law of trusts cannot be "neutrally" applied in this context. Since the purpose of the UEP trust is to "build up the Kingdom of God," the trial court will have to evaluate the trustees' management decisions on the basis of whether or not these decisions in fact built up the Kingdom of God. This the trial court is constitutionally prohibited from doing under any circumstances.

III. THIS CASE PRESENTS AN APPROPRIATE FACTUAL SETTING FOR DISCUSSION AND CLARIFICATION OF THE "NEUTRAL PRINCIPLES" DOCTRINE.

The trial court made extensive and useful findings regarding the factual setting this case presents.[3] Plaintiffs do not, and indeed cannot, dispute that the setting in which this case arose was a religious one. For example, the trial court concluded as to Mr. Bradshaw:

> [H]e went to Short Creek, taught school, engaged in various commendable religious works and activities,

---

[3] Plaintiffs have provided this Court with a statement of the facts which is not supported by the trial court's decision. While petitioners believe that the issues presented are legal and not factual, the liberties taken by plaintiffs create a factual impression not intended or found by the trial court. For example, the trial court found with regard to plaintiff Cyril Bradshaw:

> When Bradshaw moved to the community, he claims that he was told by J. Marion Hammon when he moved to the area that he was a member of the UEP. He presented no evidence that the trustees had taken the action required under the provisions of the Declaration to make him a member. (Petition, at 17A)

Plaintiffs modify this finding in their Response, as follows:

> When Bradshaw moved to the Community, he was told by J. Marion Hammon, that he was a member of the UEP. (Response to Petition, at 8.)

Further, plaintiffs assert that Bradshaw was told he could have the property "forever." (Response to Petition, at 8.) The trial court rejected this claim:

> The plaintiffs herein, including Mr. Bradshaw, could not have reasonably relied on the off hand, and abbreviated comments to which they point to create a right of ownership or perpetual use in view of all they knew about the operations of the UEP. The evidence does not support this claim. (Petition, at 22A.)

taught school for a very low wage and built a house on a UEP lot because of the depth of his religious convictions. (Petition, at 19A.)

The trial court's strong findings that this case arose in the context of religious practice provide this Court with an appropriate factual setting in which to examine and clarify the "neutral principles" doctrine, and to provide guidance as to when neutrality may nevertheless create impermissible entanglement between courts and religion.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Court issue a writ of certiorari to the Utah Supreme Court.

Respectfully submitted,

RODNEY R. PARKER
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Salt Lake City, Utah 84111
(801) 521-9000

Attorneys for Petitioners

May 5, 1999

N:\14781\4\RRP\APPEAL\CERTIORA 99R 5/4/99

wanted and that he assumed that meant forever. However he knew that his right to use UEP property was subject to limitations and he had already lost one house built on UEP property. He never tried to determine the true limitations and conditions on his occupancy of the land, although the recorded declaration was available and there is no evidence that his inquiries would not have been truthfully answered, had he made them. Mr. Dockstader cannot claim, even from the words spoken by J. Marion Hammon, according to the testimony, that he was promised perpetual use of the land. No promise was made as to the use of the land by his heirs and he knew, both from prior experience and from the general information available in the community that if he stopped using the property the UEP would take the land and its improvements. Mr. Dockstader sought and obtained the use of UEP land but he cannot now claim that the act of charity extended to him by the UEP somehow ripened into full ownership based upon the casual comment he attributes to J. Marion Hammon.

Unjust Enrichment

Mr. Dockstader has built valuable improvements on the UEP's land with the permission and encouragement of the UEP. If the UEP were to terminate his use of the home he has constructed, the trust would be benefited to the extent of the value of the improvements to the trust. The Court is of the opinion that the equities weigh in Mr. Dockstader's favor and that it would be unjust to allow the trust to simply take the improvements, during Mr. Dockstader's lifetime, without paying compensation for the value thereof.

Mr. Dockstader sought permission to occupy UEP ground for the purpose of building a home thereon. He and the UEP

knew that he was expected to build on the land. He was told that he could occupy the land for as long as he wanted, which could reasonably have created in his mind an expectation that he would be allowed to live out his days on the land so long as he did not sell the land, or mortgage it or abandon its use. He acted unreasonably in relying upon that expectation without making any inquiry as to his true status on the property but the UEP must bear the greater responsibility for the situation. The UEP made no effort to make clear that Mr. Dockstader would be a tenant at will and could be removed on the whim of the trustees. The UEP was engaged in a large scale program of inviting adherents to The Work to build on UEP property. As part of that program it was the trust's responsibility to make clear that the improvements could be seized by the trust at any time. If the UEP now acts to revoke Mr. Dockstader's use of the land, during his lifetime, it must compensate him for the value of the improvements he has built thereon.

The Court will enter a declaratory judgment providing relief to Mr. Dockstader in the same form and subject to the same limitations as stated for the previous plaintiffs.

T. David Dockstader

In the Amended Complaint this plaintiff was named as a claimant only on the claims for implied contract, constructive fraud, estoppel and unjust enrichment. At the conclusion of the plaintiffs' evidence the Court dismissed, on motion of the defendants, the claims of this defendant for implied contract and estoppel. Mr. Dockstader's improvements are located on property in Arizona. The Court will now examine the remaining claims of this plaintiff.

Mr. Dockstader was born into The Work and moved to Short Creek at the age of 2. He remembers hearing about the UEP in the mid 1950's. He was never told how to become a member or that he was a member. He assumed he became a member when he was allowed to live on UEP land because he had been a faithful adherent to The Work. He was aware that there was a written declaration of trust but he never asked about its contents, or sought to read it because it wasn't of concern to him. He has spent lots of time and effort over his life donating time, money and effort to The Work as part of his religious practices. He made no claim for reimbursement for those contributions.

He was listed as a beneficiary of the UEP at one time. However, he was never promised membership or ownership of the assets of the trust. When he obtained use of UEP ground he was living in Salt Lake about 1968. He had some changes in his work situation and decided to go back to Short Creek with his family. He approached J. Marion Hammon and Pres. Johnson at different times and explained his plans. Each said that he could go ahead. His plan was to move in with his mother who lived in a home on UEP land and to build a better home for his mother. There was no discussion of the terms of his use of the land but he knew that he could not sell, mortgage or abandon the property. In 1961-2 he had begun construction of a previous home on UEP land. He got the basement done before he decided not to proceed. He turned the land back to the UEP never asking, or expecting, compensation for the improvements he had built.

He was never told that he could stay for any specific length of time or that he could, or couldn't, be asked to leave. He never checked into those questions. He has now build several improvement on the UEP land.

Constructive Fraud

The Court finds that Mr. Dockstader has failed to prove a claim for constructive fraud. There was no evidence presented that he considered himself in a confidential relationship with the trust or its agents or that he was subjected to any extraordinary influence in deciding to build on UEP ground. In fact he made the decisions and simply asked the UEP's agents to give him the go ahead. He made his own judgments and cannot now blame the trust for the outcome.

Unjust Enrichment

Mr. Dockstader has now constructed valuable improvements on UEP land with the consent and approval of the UEP. Since neither party took steps to prevent this situation, and since the UEP was engaged in a wide spread program of inviting people to build on UEP ground, and since the UEP allowed the construction to proceed without making it clear to the occupants that they could lose the use of the land upon the whim of the trustees, the Court finds that it would be unjust to allow the UEP to simply remove the occupants without paying compensation to them for the value of the improvements. For these reasons and those previously stated as to other plaintiffs, the Court will enter a declaratory judgment in favor of Mr. Dockstader providing the same relief and subject to the same limitations as was stated for the previous plaintiffs discussed.

Marko J. Dutson

Mr. Dutson was named as a plaintiff for all six claims tried to date. At the conclusion of the plaintiffs' evidence the

Court dismissed the claim for implied contract as it relates to his home in Utah and his office in Arizona, as well as the occupying claimant claim as it relates to his office in Arizona. The Court will examine the remaining claims.

Mr. Dutson lives on UEP land in Utah and occupies an office on UEP land in Arizona. His father was associated with The Work and Mr. Dutson joined The Work in the early 1960's. During 1967-68, he built a home on UEP land and moved into in 1968. When he moved to Short Creek he learned about the UEP and its trustees. He later learned there was a written trust document but did not see a copy until late 1970's or early 1980's.

He was never told how one became a member of the UEP or that he was a member. He considered himself a member from the time he moved onto UEP land. He produced no proof that the UEP ever made him a member or promised him any interest in the assets of the trust.

When he decided to move to Short Creek he contacted Pres. Johnson and asked to be allowed to build a home on UEP land. Pres. Johnson told him to get hold of Edson Jessop for a lot and to go ahead a build a home. He testified that he then went ahead with the construction. He also testified that at a meeting sometime later Pres. Johnson told him that he could use the land as a home for himself and family "for as long as you want it".

After he moved to Short Creek, Mr. Dutson decided that the area needed a cobbler. He spoke to Pres. Johnson about it and got permission to get training in that area, which he obtained. He then went back to Pres. Johnson and asked for land to build a shop. He was assigned the use of the lot his

office now occupies. He build the office building in 1979 or 1980.

Mr. Dutson knew that the improvements were on land he did not own. He knew that he could not sell, mortgage or abandon the land or improvements or they would revert to the UEP. In 1977 he signed a Certificate of Understanding at the request of the leaders in the area in which he agreed to the UEP's terms for occupancy as stated therein (see Trial exhibit P-34). He never made inquiry into his status on UEP land.

Express Contract

Mr. Dutson has failed to prove a claim for breach of an express oral contract for the same reasons discussed with regard to previous plaintiffs. Nothing said to Mr. Dutson creates a clear, definite and enforceable contract which provides him the ownership of the land he occupies or its use in perpetuity. He understood his situation and that the improvements he built would someday go to the UEP. He received no promise as to his right to use the land under his home until the home had already been constructed. The building of the home cannot therefore constitute consideration for the contract nor can it operate to take the contract out of the Statute of Frauds since the construction is not clearly referable to that statement. By the time Mr. Dutson had built his office he had already signed a document agreeing that the improvements on UEP land belonged to the UEP. He was never made promises about the time he would be allowed to occupy the office, in any case. For these reasons, and those stated with regard to the Bradshaw claims, the Court denies relief on the contract claims.

Negligent Misrepresentation

Mr. Dutson has failed to prove his claim of negligent misrepresentation. He has failed to prove that he constructed improvements on UEP land in reliance upon representations, or omitted information. He simply chose to build on UEP land for religious reasons and cannot now complain of the lack of wisdom in his own decision. He has failed to prove, if there was reliance, that it was justifiable or reasonable or that he took efforts to determine his rights and status on UEP land. Accordingly, for these reasons and those mentioned with regard to previous plaintiffs, this claim fails.

Constructive Fraud

Mr. Dutson has failed to prove his claim for constructive fraud as he has failed to prove that his decision to build either the home or the shop was the result of a confidential relationship in which he was subjected to extraordinary influence which overcame his free will. Mr. Dutson's decision to build on UEP land was his own, not the result of his reliance on information, or the lack thereof, from a confidential relationship and the exertion of extraordinary influence over him. No such relationship was claimed or proved, nor was there evidence of undue influence.

Occupying Claimant

Mr. Dutson's claim under the Occupying Claimant Statute of the State of Utah fails for the same reason set out previously for Mr. Burnham. He build on land which he knew was not his own.

Unjust Enrichment

For the same reasons stated as to previous plaintiffs herein the Court finds in Mr. Dutson's favor on his claim of Unjust Enrichment. Again the UEP must bear the majority of the blame for the confusion as to the status of those who were allowed to build improvements on the land without clear and definite instruction as to what their status would be.

The Court will enter a declaratory judgment providing to Mr. Dutson the same relief and subject to the same limitations as that provided to the previous plaintiffs.

George Ray Hammon

Mr. Hammon was named as a plaintiff as to only the claims for implied contract, constructive fraud, estoppel and unjust enrichment/occupying claimant. The land occupied by Mr. Hammon is in Arizona. After the presentation of the evidence for the plaintiffs the Court granted the defense motion to dismiss in part and dismissed all claims for this plaintiff except constructive fraud and unjust enrichment. The Court will now examine the remaining claims.

Mr. Hammon was born into The Work, the son of J. Marion Hammon. He has lived most of his life in the Short Creek area. He first learned of the UEP in the 1960's. He knew that the trustees were members of the priesthood council, including his father. He knew then that there was a written trust document and that it was recorded on the public records but he did not actually see it until the mid 1980's. He never heard any discussion of the contents of the Declaration. He did not know, prior to reading the Declaration, how one became a member of the UEP although he assumed he

gained membership when he received use of the "Hildale home" in the mid 1970's. He was named a beneficiary of the trust (see trial exhibit P-3). He thought the UEP owned assets besides land but no one ever told him that he was to be part owner of the assets of the trust.

Mr. Hammon occupied the "Hildale home" on UEP property for many years. He now resides on another piece of property in Arizona. Mr. Hammon contacted Pres. Johnson in the fall of 1973 and asked for permission to build his current home on UEP property. He was given permission but there was no discussion of the terms of his occupancy. He has now completed substantial improvements to the property and has occupied the home thereon since 1985. He thought that he would be allowed to remain in the home as long as he was true to his religion and didn't try to sell, mortgage or abandon the property. He knew he did not own the land. He did not know that he could be asked to leave by the trustees or that he could be forced off the land. He made no inquiry as to his rights or status on UEP land.

Constructive Fraud

Mr. Hammon has failed to prove, by clear and convincing evidence, that he acted in building his current residence because of his involvement in a confidential relationship and the application of extraordinary influence to overcome his own will. He sought permission to build on UEP land and it was granted. He cannot now fault his benefactor for the results of his own decision.

Unjust Enrichment

The Court finds that the elements of unjust enrichment have been proven in this case for the same reasons cited previously with regard to other plaintiffs. The Court will enter a declaratory judgment providing the same relief and subject to the same limitations as provided previously to other plaintiffs.

Jacob LeGrand Hammon

Mr. Hammon was named as a plaintiff as to all six of the causes tried to date. At the close of the plaintiffs case the Court granted a defense motion in part and dismissed this plaintiff's claims for implied contract and occupying claimant (Arizona property). The Court will now examine the remaining claims.

Mr. Hammon was born into The Work, the son of J. Marion Hammon. The Court cannot afford full credibility to the testimony of Mr. Hammon as he was contradicted in several particulars by statements he had previously made under oath, such as the time period when he first read the trust Declaration. The Court heard the following testimony from Mr. Hammon.

He stated that he first heard of the UEP in his youth and that he was aware that there was a written declaration. He first testified that he had not seen the Declaration until 1985, after he had constructed improvements on UEP land. However he was confronted by deposition testimony in which he stated that he read the Declaration of Trust within two weeks after he was given permission to build on UEP land and before he began construction. He then explained

that he had in fact seen the document before the house was built but did not care to read it at that time. He claimed he first read the document after the home was built.

He testified further that he understood that he did not own the land he built on, even though he thought it had been "given" to him. He knew that the improvements would belong to the UEP if he left the property. He did not know that he could be asked or forced to leave. He knew he could not sell or mortgage the property. He did not realize that he was using the land at the pleasure of the trustees.

He testified that Edson Jessop told him that he was "investing in his future" by working on religious projects. He was never promised any particular earthly reward, nor did he make further inquiry. He was never told how one becomes a member of the UEP or that he had been voted a member by the trustees. He testified that at one time he was told by Edson Jessop that he was a member but he was never promised any interest in the assets of the trust based on that membership.

He testified that when he was assigned a lot, Edson Jessop told him that he could have the lot for as long as he wanted and even give it to the children. He further testified that Edson told him if he got convicted of a felony he would lose the use of the lot but his wife and children could have it.

Express Contract

The Court finds that Mr. Hammon has failed to prove an express contract under the evidence in this case. The Court finds the plaintiff's testimony to be difficult to believe in view of the vast body of evidence in this case indicating the

usual procedures and statements made by Edson Jessop to those he was assigning lots. It is hard to believe that he would make promises of the type Mr. Hammon claims, including the representation that Mr. Hammon could pass the use of the land to his children, even if he committed a felony which would disqualify him from possessing the land himself. This testimony flies in the face of testimony from this plaintiff's own father that he never gave another the right to occupy UEP land forever. Even if the Court were to accept the testimony of Mr. Hammon at face value, it still does not create an enforceable oral contract giving in Mr. Hammon the perpetual right to occupy UEP land. Mr. Hammon was well aware that there were limitations on the right to use the land and that there was a written trust declaration defining the powers of the trustees to withdraw benefits extended by the trust. He knew he was not being offered ownership of the land. He was being given the right to use the land by permission of the trust. He also knew that Edson Jessop was not a trustee and that the trustees would have to vote to extend such benefits to him.

Negligent Misrepresentation

The Court finds that Mr. Hammon has failed to prove his claim for negligent misrepresentation for the same reasons stated as to previous plaintiffs. Mr. Hammon could not reasonably rely on statements made by Edson Jessop when he knew that there were other terms and conditions governing his use of the land and that there was a written document containing information defining, in part, his right to use the land. Mr. Hammon was never promised that he could look to the UEP to provide for his security or that he would be a co-owner of the trust assets or that he could only lose his home if he left it. He did not act in ignorance of the

existence of a written declaration of trust, as he had seen it prior to building and therefore knew, or should have known, that his rights on the property could have been withdrawn at any time by the trustees.

Constructive Fraud

The Court finds that Mr. Hammon has failed to prove his claim for constructive fraud for the reasons stated as to previous plaintiffs. His relationship with Edson Jessop was not a confidential one within the meaning of the law of this claim, nor was he subjected to extraordinary influence or persuasion to induce him, against his freely exercised will, to build on UEP property. The evidence clearly indicates that he sought permission to do just that, and was successful. If it was a bad idea, he must bear the blame for the outcome, not his benefactor.

Unjust Enrichment

The Court finds that Mr. Hammon has proven the elements of this claim and that the equities weigh in his favor for the reasons stated as to previous plaintiffs. The Court will enter declaratory judgment providing Mr. Hammon with the same relief, and subject to the same limitations, as was provided to the previous plaintiffs.

Merrill Harker

Mr. Harker was named a plaintiff in the Amended Complaint on the claims for implied contract, constructive fraud, estoppel and unjust enrichment/occupying claimant. At the close of plaintiffs' case in chief, and on defendants' motion, the Court dismissed all this plaintiff's claim except

constructive fraud, unjust enrichment and occupying claimant. The Court will now examine the remaining claims.

Mr. Harker resides on UEP property in the State of Arizona. He associated himself with The Work in 1969 at the age of 18-19. He moved to Short Creek in 1966. He first heard of the UEP around 1960. He saw the Declaration in 1980 for the first time. He knew that the Declaration existed since 1960 but did not know that it had been recorded. He never sought to read the Declaration prior to building on UEP land, nor did he ever hear its contents discussed. He was never told how one becomes a member of the UEP nor was he promised ownership of the assets of the trust. He was named as a beneficiary of the trust at one time on recorded documents. He assumed he was a member of the UEP from the time he moved onto UEP land but he could produce no evidence that the trust had voted him a member.

In 1967-68 he approached J. Marion Hammon about getting a lot to build on. He had previously scouted the area and selected a lot to occupy. He so informed Mr. Hammon. He was directed to get together with Edson Jessop and did so. Edson helped him lay out the comers of the lot. He has now constructed improvements on the land. He knew as he took possession of the lot that it was not his land, that it belonged to the UEP, that he could not sell, mortgage or abandon it. He assumed he would be able to stay as long as he wanted to but he received no such promise. No one ever told him what would happen if he fell out of harmony religiously with the trustees, nor did he inquire.

Constructive Fraud

The Court finds that Mr. Harker has failed to prove this claim. There is no showing of the elements of that claim, including a showing of a confidential relationship and the exercise of extraordinary influence. For these reasons and those previously stated regarding the similar claim of other plaintiffs the Court denies relief on this claim.

Unjust Enrichment

The Court finds that Mr. Harker has met the elements of this claim and that the equities weigh in his favor for the reasons stated as to previous plaintiffs. The Court will enter a declaratory judgment providing the same relief and subject to the same limitations as provided to the previous plaintiffs and for the same reasons.

Occupying Claimant

Upon examining the facts in this case, it is apparent that the occupying claimant statute has no application to Mr. Harker as the land he occupies is in Arizona. However, his claim would be subject to the same defects identified by the Court in denying the claim of Mr. Burnham hereinabove.

James Michael Pipkin

Mr. Pipkin was named as a plaintiff on all six of the claims tried to date. At the close of the plaintiffs' case in chief the Court dismissed only the claim for implied contract. The Court will now discuss the remaining claims.

Mr. Pipkin occupies UEP land in Utah. He was first introduced to The Work in 1959 as a child. In 1960, while in high school, he moved to Short Creek. He has resided there since except for brief periods of absence.

He first heard of the UEP in 1962 in a religious meeting. One of the speakers mentioned it briefly. He later (about 1963) learned that J. Marion Hammon was the agent for the UEP although he didn't know that at the time he discussed going on a mission. He didn't know about the trustees until 1983. He first saw the Declaration in 1982 and tried to read it but didn't understand it. He never knew how one becomes a member of the UEP.

He had many dealings with both J. Marion Hammon and Leroy S. Johnson and developed great trust and confidence in them as his spiritual and temporal advisors. In 1963 he approached J. Marion Hammon about going on a mission for The Work. He had heard an invitation extended to those completing their schooling at the Colorado City Academy by J. Marion Hammon and Pres. Johnson. He was accepted as a missionary and assigned to work with Edson Jessop initially. He then asked J. Marion Hammon, "What is in this for me?" He testified that Mr. Hammon told him that his reward would be that he would be "given" a lot and a young wife. He then undertook the mission and made considerable contributions in cash and labor to The Work.

When he returned to Short Creek from the military in 1967, he met with J. Marion Hammon who said, "You've served an honorable mission and I'd like to welcome you into the United Effort Plan." He could produce no evidence that the trustees had voted him a member of the UEP but he

was named a beneficiary of the UEP in recorded documents. He was never promised any interest in the assets of the trust.

In October, 1967, he met with J. Marion Hammon in his home and he testified that Mr. Hammon said, "I want to complete my promise and give you a lot to build a home on. Go see Edson. " He had already been given a wife by the time of this conversation. He and Edson Jessop picked out his lot and he was told to fence it, build on it and live on it as long as he wanted.

He has now built improvements on the lot which he occupied in about Jan. 1969. Prior to the improvements he was never told that he was a tenant at will or that he did not own the lot. He claimed he did not know how land was transferred but he did know that he would lose the lot and the improvements to the UEP if he stopped using the lot. He was never told that he could use the lot forever or for any other specific period of time. He never asked about the terms of his use of the lot, or whether he owned it or not.

Express Contract

The Court finds that Mr. Pipkin has failed to prove his claim of the existence of an express oral contract allowing him perpetual use of the UEP land he now occupies, or that he was a co-owner of the assets of the UEP trust, or that the UEP would provide those benefits listed in paragraph 16(c) of the Amended Complaint. Mr. Pipkin never claimed that he was expressly promised anything except that he would be given a UEP lot to build on and a young wife. He received both. Nothing in the conversation addressed the terms and limitations on his use of the property although he was aware that some limitations existed and that the lot would not be his

free of any claim by the trust. The conversations he held with J. M. Hammon did not contain terms about the duration of the use sufficiently clear and definite to be enforceable by this Court. Mr. Pipkin assumed that he had the perpetual use of the lot but Mr. Hammon never made that promise.

The Court is unpersuaded that Edson Jessop would have promised that Mr. Pipkin could use the lot for as long as he wanted. The evidence of Edson Jessop's practices in assigning lots is contrary to this assertion. In addition there has been no evidence presented that Mr. Jessop had authority to speak for the trust. The right to use a lot perpetually would have to be granted by the trustees or the President under the Declaration.

For these reasons, and those stated in the discussion of the claims of Mr. Bradshaw, the Court denies relief on this claim.

Negligent Misrepresentation

The Court finds that Mr. Pipkin has failed to prove his claim for negligent misrepresentation because he was not told he would have perpetual use of UEP land, but only assumed that he had such use. He knew that he was building on land owned by the UEP and that there were limitations on his use of the property. He knew that the property was owned by a trust and that the trust had a written declaration but failed to make any inquiry as to its contents or his status. The negligence in this situation is Mr. Pipkin's. He could not have reasonably relied on the words or J. Marion Hammon as giving him unrestricted, perpetual use of the land upon which he built.

Further, the Court is not convinced, given the vast amount of testimony heard on the topic, that J. Marion Hammon would have ever told Mr. Pipkin that he was being "given" a lot for his perpetual use. In his testimony Mr. Hammon denied ever making such a statement to any lot user. Such an arrangement would have been contrary to the entire program in which the UEP was engaged in the Short Creek communities. The clear weight of the evidence shows that he would not have been "given" a lot or specifically promised perpetual use of it by Mr. Hammon.

Constructive Fraud

The Court finds that Mr. Pipkin's claim for constructive fraud has not been proven by clear and convincing evidence. There is no persuasive testimony that he was in a confidential relationship within the meaning of the law, or that he was subjected to extraordinary influence, or that his own will was dominated by another. He received what he was promised in any event.

Estoppel

The Court finds that Mr. Pipkin has failed to prove the claim for estoppel set out in the Amended Complaint. The proof does not support the claims set out in that pleading as to this cause of action. Mr. Pipkin never understood that he was to be an owner of the assets of the trust, or that his long term security would be provided for by the trust. And regardless of his assumptions, he was never told that he would have the right to occupy UEP land perpetually. He could not have reasonably relied upon the statements of Edson Jessop or J. Marion Hammon in that regard without some minimal inquiry as to his position.

Occupying Claimant

The Court finds that Mr. Pipkin's claim on this ground has not been proven and must fail for the same reasons set out above in the discussion of the claims of Mr. Burnham, specifically that Mr. Pipkin knew he was not the owner of the property.

Unjust Enrichment

The Court finds in favor of Mr. Pipkin on this claim for the reasons set out with regard to the previously discussed plaintiffs. The Court will enter declaratory judgment providing the same relief and subject to the same limitations as provided for the plaintiffs previously discussed.

David L. Stubbs

Mr. Stubbs was named as a plaintiff on all six causes tried to date. At the close of the plaintiffs' case in chief, on motion of the defendants, the Court dismissed all claims except implied contract, constructive fraud, and unjust enrichment. The Court will now examine the remaining claims.

David Lawrence Stubbs occupies a home on UEP land and has an unoccupied trailer with an addition but with no water service, on a separate plot of UEP land, both in Arizona. He has lived in Short Creek all his life. He was never given permission to use the parcels of land. Each was turned in to the UEP by Mr. Stubbs or his parents and he just continued to use the land without express permission. He has built valuable improvements on the UEP land with the

knowledge and tacit consent of the UEP. No one ever objected to his use of the properties until he received the tenant at will letter in the mid 1980's.

He first saw the Declaration of Trust about the time of the tenant at will letter. He had heard of the UEP from childhood. He also knew from his father that the Declaration had been recorded and he could go look at it, but he never did so until the mid 1980's. No one ever explained its contents and he never made inquiry. He was named as a beneficiary of the UEP at one time in recorded documents. He never understood there was a difference between membership and being a beneficiary in the trust.

He first occupied the trailer in the early 1960's while he was building a new home. The land was for sale by his father but he knew that it was going to be put in trust with the UEP by his father. It has since been deeded to the UEP. He stopped living in the trailer from 1975 to 1989, then he moved into the trailer for a short time with his wife Cora Fischer Stubbs. This plaintiff and the former Mrs. Stubbs are defendants in one of the consolidated cases which seeks to remove them from the trailer lot. The trailer was vacant and unused at the time of trial. Mr. Stubbs knew that the trailer was on land deeded to the UEP. He knew that he could not abandon, sell or mortgage the land once it was turned in to the UEP. He has not sought, or been given, permission to use the trailer or to occupy the lot. He claims the trailer and other improvements have great value which the defendants dispute.

He first lived on the lot where his home now stands (the home lot) in the early 1960's in the old home his family occupied. That home was eventually demolished. In

November, 1962, he executed a deed turning in the 5 acres on which his home stands to the UEP. Thereafter he built a new home on that property without consulting the UEP for permission. No one objected to the construction. He occupied the new home in 1977-78 and still lives there. He testified that when he deeded the land to the UEP he was told by Fred Jessop that by deeding the land to the trust he would secure it forever for him and his family from attack by enemies of the religion and that he would be giving up nothing. However, he knew that he was conveying title to the trust and that thereafter there were limitations on his use of the property. He knew he could not sell, mortgage or abandon the property and he also knew that the trustees had the right to ask those who were "wicked" to move from UEP property. He also testified that Fred Jessop told him he would be a member of the UEP when he turned in the deed to the 5 acres but he was unable to show that he had been made a member by vote of the trustees.

Implied Contract

The Court finds that Mr. Stubbs has failed to prove the existence of an implied contract allowing him perpetual use of either the trailer lot or the home lot. In each case the land was deeded to the UEP with no reservation of any estate or interest. Mr. Stubbs has simply remained in possession, apparently without objection from the trust, but the Court is unable to determine from the conduct of the parties that there was an agreement as to how long Mr. Stubbs would be allowed the use of the land or with regard to the other claims in the Amended Complaint.

Constructive Fraud

The Court finds that Mr. Stubbs has failed to prove the elements of this claim. The evidence does not demonstrate that Mr. Stubbs constructed the improvements on the UEP land as a result of a confidential relationship with the defendants, or their agents. He gave the land to the UEP out of religious zeal and to protect the land from the enemies of his chosen beliefs. He made his own choices in the matter and no extraordinary influence was brought to bear to convince him to deed the land to the UEP or thereafter to build valuable improvements. He was never promised ownership of the assets of the trust, although he may have been promised membership therein. However, even assuming that promise, membership entitles one to no ownership interest in the assets of the trust until the trust is dissolved. This information was available to Mr. Stubbs but he chose not to investigate his position by reading the Declaration or asking questions of the trust representatives. The Court denies relief on this claim for these reasons and those discussed in the Bradshaw claims.

Unjust Enrichment

With regard to the trailer lot, the Court finds that Mr. Stubbs has failed to prove a claim for unjust enrichment. He built the improvements, if in fact they are improvements, knowing that he was building on a lot belonging to the UEP. He had no permission to use the lot. He knew that he could not abandon the use of the lot or it would revert to the UEP. The evidence is uncontradicted that the trailer has long since been abandoned. Mr. Stubbs has no further claim on the use of that property or the improvements constructed thereon.

With regard to the home lot, Mr. Stubbs deeded the property to the UEP believing that he would be allowed to remain in possessions of the lot under the UEP rules as he knew them. The UEP did nothing to inform him that he would not be allowed to use the lot during his lifetime. He has now constructed valuable improvements on the land with at least the tacit acquiescence of the trust which was aware of his use of the land and did nothing to dissuade him. The Court finds that it would be unjust under the circumstances to allow the UEP to discontinue, during Mr. Stubbs' lifetime, his use of the home lot without paying compensation for the value conferred on the trust by the improvements on the land. The Court will enter declaratory relief in favor of Mr. Stubbs on this claim as to the home lot providing the relief and subject to the conditions set out above with regard to the previously discussed plaintiffs.

Ray Dockstader Timpson

Mr. Timpson was named in the plaintiffs' Amended Complaint as a claimant on the causes of action for implied contract, constructive fraud, estoppel, and unjust enrichment/occupying claimant. At the close of plaintiffs' case in chief the Court determined that the only claim of Mr. Timpson which should be dismissed was the occupying claimant cause as his home is located in Arizona.

In May, 1995 Plaintiffs' counsel filed a motion seeking amendment of the Amended Complaint on the grounds that in ruling on the defense motion to dismiss after the plaintiffs' case in chief the Court ruled that Mr. Timpson had presented sufficient evidence to state a claim for express contract and negligent misrepresentation and that those issues had been tried by express or implied agreement of the parties as

provided by Rule 15, URCP. The motion has never been answered, argued or submitted for ruling. However, the Court is of the opinion that it must be denied. The Court's rulings on the defense's motion to dismiss has been transcribed. The Courts ruling was as follows:

> "The next plaintiff was Ray Dockstader Timpson. His property is in Arizona. He testified that he was told by President Johnson that they would give him a lot. Under those circumstances, I'm dismissing the occupying claimant portion of his claim, as--as his home is located in Arizona. I'm also going to deny the motion as it--as it relates to the other claims.
>
> "On the subject of the implied contract, he testified that he likewise came to the Colorado City/Hildale area to teach, for a low wage, and was -- understood that the lot was part of his compensation. And that supports the implied contract claim. So the only thing dismissed is the occupying claimant claim." [See transcript for December 20, 1995, page 11, lines 10 through 22.]

The plaintiffs' assertion that the Court ruled that Mr. Timpson had stated a claim for Express Contract and Negligent Misrepresentation was in err. The motion to amend is denied.

The remaining claims are implied contract, constructive fraud, estoppel and unjust enrichment. The Court will now discuss those claims.

Mr. Timpson was born into The Work, the son of Alma Timpson who acted as a. member of the priesthood council for many years and who was one of the leaders of the 2nd

Ward. Ray Timpson moved to Short Creek at age 7. He had heard of the UEP from childhood. He first saw the Declaration of Trust either in 1976 or in the 1980's, depending on whether one believes deposition testimony or trial testimony. Even though he knew of the document he made no effort to read it as he saw no reason to do so. He never heard anyoné discuss the contents. No one ever told him he had been made a member of the UEP. He assumed he was a member when he got his lot. He was named as a beneficiary in documents recorded in Arizona at one time. He was never promised any ownership of the assets of the trust although he was told by his father at one time that everyone owned everything.

Mr. Timpson was sent to college as his mission for The Work. He studied history so he could go back and teach at the Academy. When he finished his schooling in the spring, 1975, he spoke to Pres. Johnson about a lot. Pres. Johnson told him "they would give me one". He was referred to Edson Jessop who staked out the lot and encouraged him to build small and then add on. He followed that advice and has now built valuable improvements on the land in three phases. The last of those phases, an addition of about 5000 square feet, was added after Mr. Timpson had been put on notice that the UEP considered him a tenant at will. He never intended to make a contribution to the UEP in building the improvements. He testified that he thought he had been "given" the lot. However, he knew that he could not sell, mortgage or cease to occupy the lot or the UEP would take it back with its improvements. He did not know and was never told that he could be removed by the trustees at their pleasure before building the first two phases.

Even though Mr. Timpson testified that he thought he was the owner of the lot, he went to representatives of the UEP to get permission for each phase of the expansion of his home. He knew that he needed permission to add on. He derives his definition of ownership from a religious concept of stewardship which he believes in, not on the law of the land. He knew throughout the period in question that title to land was transferred by deed and that the title to the land he occupied belonged to the UEP.

Implied Contract

The Court finds that Mr. Timpson has failed to prove his claim. He rests his claim on the word "given" which he ascribes to President Johnson. Even if the Court were persuaded that the word was actually used, that does not automatically give rise to the inference that Mr. Timpson was entitled to use the lot perpetually, much less that he was the owner thereof. In view of all Mr. Timpson knew about how title to land is transferred and about the restrictions in force on his use of UEP land, it was not reasonable for him to rely on the use of one word, given, as a basis for assuming that he had the right to use the lot forever, no matter whether he complied with those restrictions or not. He was obligated to make inquiry to clarify his status. The Court finds no evidence that there was a meeting of the minds in this situation. The Court is persuaded by the testimony and evidence that Mr. Timpson, an educated person and son of one of the leaders in The Work and UEP, knew very well that he was on the land with the permission of the true owners and under limitations. That is born out by the fact that Mr. Timpson sought UEP permission before adding on to his home. In addition Mr. Timpson certainly has no claim for

implied contract for the addition he built even after being specifically notified that he was a tenant at will on UEP land.

Constructive Fraud

The Court finds that this claim has not been proven as to this plaintiff. The evidence before this Court is insufficient to support the proposition that Mr. Timpson was in a confidential relationship with the trust or its agents and that he came under extraordinary influence such that his will was overcome in this transaction. For the reasons stated with regard to the previously discussed plaintiffs the Court finds against the plaintiff on this claim.

Estoppel

The Court finds that Mr. Timpson's claim for estoppel has not been proven. Mr. Timpson never testified that he had been promised ownership interest in the assets of the trust of any different character than anyone else in the community. He had available to him the means to determine his true relationship with the trust which he chose to ignore. Likewise he was never promised long-term security from the trust and he did not so indicate in his testimony. He could not reasonably rely on the one word gift of a UEP lot in view of all he knew and accepted about the restrictions on his occupancy of the lot. He did not rely reasonably upon the language of Pres. Johnson in constructing improvements on the lot. He has no claim of estoppel for the last addition built after specific notice that he was considered by the trust to be a tenant at will and not a perpetual occupant.

Unjust Enrichment

The Court finds for Mr. Timpson on his claim of unjust enrichment for the reasons stated with regard to previous plaintiffs. In addition, Mr. Timpson was allowed by the trust to construct valuable improvements on UEP land, even after he had been notified that the UEP considered him a tenant at will. It would be unjust for the UEP to take those improvements without compensation therefore. The Court will enter declaratory judgment providing the relief, and subject to the same restrictions, as stated in discussion of the previous plaintiffs.

Fayila Maureen Williams

Ms. Williams was named a plaintiff in the Amended Complaint for the claims of implied contract, constructive fraud, estoppel and unjust enrichment/occupying claimant. At the close of plaintiffs' case in chief the Court dismissed, on defense motion, the claims of Ms. Williams except for occupying claimant. The Court will now address that remaining claim.

Ms. Williams sought to assert the position of her dead husband in these proceedings. She is currently in possession of the home they occupied together but could prove no permission from the UEP for her to use it. She was not present when her husband was given permission to use the land and no persuasive and admissible evidence was presented of what transpired when her husband took possession of the land. She has not constructed any improvements directly although she assisted her husband in doing so by working and giving her pay to him. She always

knew that the home she occupied was on land owned by the UEP.

Occupying Claimant

The Court finds that Ms. Williams has failed to prove her claim under the Utah statute. As stated in the discussion of Mr. Burnham's claim, one cannot state a claim under that statute without proving a good faith belief of ownership of the land in question. Ms. Williams, and presumably her husband, always knew that they were building on the land of another.

John M. Williams

Mr. Williams was named a plaintiff on all claims tried to date. At the close of plaintiffs' case in chief the Court dismissed only his claim for implied contract. The Court will now address the remaining claims.

Mr. Williams occupies a lot in Utah. He became associated with The Work in 1952 as a child. He knew of the UEP and the written Declaration most of his life although he first saw it in 1980. He did make efforts to see the Declaration but testified that he was discouraged by J. Marion Hammon and Edson Jessop. He believes he became a member of the UEP when he was allowed to use a UEP lot. He claims Edson Jessop told him he was a member once. He produced no evidence that he had been made a member by vote of the trustees. He was named a beneficiary of the trust in documents recorded in Arizona.

At or near the end of 1969 he went to Pres. Johnson and was told that it was time for him to build a home. Pres.

Johnson referred him to Edson Jessop who helped him select a lot. He has since built valuable improvements on the land. Mr. Williams testified that at some point Edson Jessop told him the lot was his. He always knew he was building on land owned by the UEP. He knew that if he left the improvements, they and the land would revert to the UEP. He never made inquiry as to his rights or status on the land and was never promised perpetual use or ownership. He never considered himself a tenant at will but made only feeble inquiry to discover the truth of his situation. He was never told that he could be asked to leave the land at the pleasure of the trustees or that he could be forced to leave. He was never told that Edson Jessop had any authority to enter into agreements on behalf of the UEP. He was never told that the UEP would provide him with long-term financial security.

Express Contract

The Court finds that Mr. Williams has failed to prove his claim of express contract. He was never promised that he would have perpetual use of the UEP land and in fact he understood that his use was restricted and conditional. He has also failed to prove the other contract claims asserted in the Amended Complaint.

Negligent Misrepresentation

The Court finds that Mr. Williams has failed to prove this claim. He denied that he was told that his long-term security would be seen to by the UEP. No one with authority to speak for the UEP promised him ownership of the trust assets. He testified he was told that he could only be removed from the lot if he left. He was never told the UEP would protect his lot from attacks from without the com-

munity. The Amended Complaint then alleges that Mr. Williams was mislead by the failure of the trust to inform him of certain information. Mr. Williams knew there was a Declaration of Trust which he could review to determine his status and rights. He never approached the trustees about reviewing the document, nor did he undertake any meaningful inquiry about his status on the land. At best he made inquiry about reading the document and was discouraged by Mr. Hammon and Mr. Jessop. The Court is persuaded by the evidence that Mr. Williams was motivated to build on UEP land by his religious convictions and his desire to live among those who believed as he believed. He was not mislead into thinking that he was an owner of the trust, or that he had perpetual right to use the land by the failure of the UEP to fully inform him of the facts. He is as responsible for his lack of knowledge on the subject as is the UEP.

Constructive Fraud

The Court finds that Mr. Williams has failed to prove this claim. The evidence does not support the proposition that he was in a confidential relationship, within the meaning of the law, or that he was subjected to extraordinary influence which caused him to build on UEP land. He wanted to do so. He sought and obtained permission. He exercised his own free choice and cannot blame another for the consequences of his failure to inform himself of the circumstances.

Estoppel

The Court finds that Mr. Williams has failed to prove his claim for estoppel. He was not promised co-ownership of the assets of the trust, or perpetual use of a lot, or long-term

security as stated in the Amended Complaint. Therefore he could not have reasonably relied upon such information.

Occupying Claimant

For the reasons stated in discussing the claims of Mr. Burnham, Mr. Williams has failed to prove his right to the protection of the occupying claimant statute of Utah.

Unjust Enrichment

The Court finds that Mr. Williams has proved his claim for unjust enrichment in that he has conferred a benefit upon the UEP by constructing valuable improvements on the land of the trust with the express encouragement and consent of the trust. The Court finds that it would be unjust to allow the trust to take the improvements under the circumstances presented without compensation for the value conferred upon the trust. The Court will enter declaratory judgment providing the same relief, and subject to the same restrictions, as stated with regard to the previous plaintiffs and for the same reasons.

Roger Eugene Williams

Mr. Williams was listed in the Amended Complaint as a plaintiff on all six claims tried to date. At the close of plaintiffs' case in chief the Court dismissed all Mr. Williams claims except constructive fraud and unjust enrichment. The Court will now discuss the remaining claims.

Mr. Williams occupies UEP land in Arizona. He became affiliated with The Work in 1952 as a child. He knew of the UEP from childhood. He never had dealings with anyone

from the UEP. He has never seen the Declaration of Trust. He was never told how to become a member of the UEP although he always thought he was a member. No one told him he was a member but he assumed he was after being allowed to use a UEP lot.

He asked Edson Jessop for a UEP lot in 1970 and was assigned one to build on. He never spoke with a member of the priesthood council or the trustees to get permission. Edson assigned the lot and he built on it. His house plans were reviewed by Pres. Johnson before he built. He was never told he would be a tenant at will but made no inquiry as to his status. He knew that he couldn't sell, mortgage or abandon the use or his property would go back to the UEP. He also knew the trustees would ask people to leave UEP land if they had committed some act of moral turpitude. He was never given a deed to the land he occupies.

Constructive Fraud

The Court finds that Mr. Williams has failed to prove his claim for constructive fraud as there is absolutely no evidence of a confidential relationship or extraordinary influence as discussed previously with regard to other plaintiffs.

Uniust Enrichment

The Court finds that Mr. Williams has proved his claim for unjust enrichment for the reasons stated previously with regard to the other plaintiffs. The Court will enter declaratory judgment providing the same relief, and subject to the same restrictions, as that stated in regard to other plaintiffs previously.

Thomas J. Williams

Mr. Williams was named as a plaintiff in all six of the claims tried to date. The Court dismissed only the implied contract claim at the conclusion of the plaintiffs' case in chief. The Court will now discuss the remaining claims.

Mr. Williams occupies UEP land in Utah. He has been associated with The Work since earliest childhood. He moved to Short Creek in 1952 at 4 years of age. He first heard of the UEP as a youth. He thought it owned several enterprises in the community and that most people were "tied up" with the UEP.

His dealings were mostly with J. Marion Hammon, whom he feared and trusted greatly. He knew there was a written document for the UEP during his high school years but did not know it was recorded. He never saw, or sought, the document until 1982. He never heard anyone discuss the contents of the document in meetings. He was told that he could become a member of the UEP by consecrating labor or service.

In July, 1970, he approached J. Marion Hammon to get a lot. Mr. Hammon told him that he had served the priesthood well and was welcome to get a lot and build on it. He thought that made him a member of the UEP, although he produced no evidence that the trust had made him a member. He was listed among the UEP's beneficiaries in recorded documents.

He built a home and completed it in 1973. At some time thereafter he had a talk with Edson Jessop in which he asked

what the trust was for. Edson said the homes on UEP land belonged to them and their families and they should build nice homes. There were no other discussions regarding Mr. Williams rights or status on UEP land. He knew, however, that the trust owned the land and that he could not sell, mortgage or abandon the land or it would go back to the UEP. He was not told that he was a tenant at common or that he could be forced off the land. No one ever told him how long he would be allowed to use the lot.

Express Contract

The Court finds that Mr. Williams has failed to prove his claim of express contract. He has failed to prove that he was offered perpetual occupancy of the land. He has not proven that he was promised co-ownership of the trust assets or that he was promised security from the UEP. Any comments from Edson Jessop about the purpose of the trust came after the improvements had been built and were not the basis on any agreement or any action by Mr. Williams.

Negligent Misrepresentation

The Court finds that Mr. Williams has failed to prove this claim as there is no evidence that he received the representations set out in the Amended Complaint or that he did not receive, or was mislead by the failure to communicate the information set out in the Amended Complaint. In addition it is apparent that Mr. Williams took no steps to ascertain the truth of his position on the UEP land before installing improvements. He had the means to inform himself but chose not to pursue those means.

Constructive Fraud

The Court finds that Mr. Williams has failed to prove this claim for the same reasons as the previous plaintiffs. He did not even claim that he built on UEP ground because of this confidential relationship with the defendants or their agents. He sought out the permission to build on the land and it was granted. He cannot now place blame on his benefactor because of his own self induced lack of information.

Estoppel

The Court finds that Mr. Williams has failed to prove this claim as he has pointed to no action, statement or admission of the defendants upon which he reasonably relied in building the improvements on UEP land. He knew that he was building on the land of another and made no reasonable inquiry as to his rights and status prior to building.

Occupying Claimant

The Court finds that Mr. Williams has failed to prove this claim because he lacked the good faith required under Utah law, as discussed with regard to Mr. Burnham's claim.

Unjust Enrichment

The Court finds that Mr. Williams has proven this claim. For the reasons stated with regard to previous plaintiffs, the Court will enter declaratory judgment providing the relief, and subject to the same limitations, as has been provided for previous plaintiffs under this claim.

Don D. Timpson

Mr. Timpson was named in the Amended Complaint as a plaintiff on all six causes of action tried to date. The Court dismissed, at the conclusion of the plaintiffs' case in chief, all claims except constructive fraud and unjust enrichment. The Court will address those claims now.

Mr. Timpson was born into The Work, the son of Alma Timpson previously mentioned. He knew of the UEP as a child and knew of its Declaration although he never thought it important until 1987. He asked Rulon T. Jeffs if he could read the document and was provided a copy and allowed to read it.

He approached Pres. Johnson in June, 1977, and asked about moving to Short Creek and getting a UEP lot. Pres. Johnson told him to contact Edson Jessop, who assigned him a lot. He was told to start small, build a fence and that his name would appear on the next list of beneficiaries, which it did. He has since built valuable improvements on UEP property with the agreement and consent of the UEP.

Constructive Fraud

The Court finds that Mr. Timpson has failed to prove his claim for constructive fraud. The evidence is unpersuasive that he was involved in a confidential relationship, within the meaning of the law or that he was subjected to extraordinary influence, or that his will was overcome in any way. He sought permission to build on UEP property and got it. He did so without the slightest attempt to inform himself as to his rights or status on the land. He cannot blame the UEP for his own lack of diligence.

Unjust Enrichment

The Court finds that Mr. Timpson has proven his claim for unjust enrichment. He has conferred a benefit by building valuable improvements on UEP land, with express consent and encouragement of the UEP, under circumstances which the Court finds would make it unjust for the owner of the land to take the improvements, during Mr. Timpson's lifetime, without paying for the value gained by the trust. The Court will enter declaratory judgment providing the same relief and subject to the same limitations as provided for previous plaintiffs under this claim.

John W. Timpson

Mr. Timpson was named in the Amended Complaint as a plaintiff in all six claims tried to date. The Court dismissed all claims except implied contract, constructive fraud and unjust enrichment. The Court will now address those remaining claims.

Mr. Timpson has been associated with the work since birth and is the son of Alma Timpson. He went to the Univ. of Utah and the taught at the Colorado City Academy. He moved to Short Creek in 1960. He was living with his father. J. Marion Hammon assigned him a lot and told him to build on it and to develop a water well. He built the improvements on the lot and moved in 1969. He knew that he did not own the lot. He knew that he could not sell, mortgage or abandon it without losing it to the UEP. He knew people could be asked to leave town for not adhering to priesthood council standards.

Mr. Timpson testified that he came to the area and taught at the Academy at very low wages. Although no one told him so, he assumed that the use of a lot was part of his compensation for teaching and that he was allowed to use it because he was a member of The Work in good standing. He was never told that he was a member of the UEP although he was listed as a beneficiary. He made lots of contributions of labor and money to The Work and the UEP but he could produce no evidence that he was ever made a member or that anyone with the authority to speak for the trust ever promised him co-ownership of trust assets.

Implied Contract

The Court finds that Mr. Timpson has failed to prove his claim of implied contract. Nothing in the conduct of the parties allows the Court to conclude that there was an agreement that Mr. Timpson would be allowed perpetual use of the lot he built on. Mr. Timpson may have assumed that he had that right but no such intent was evident from the conduct of the UEP. He was treated just like the other 200 or so persons who were allowed to live on UEP property.

Constructive Fraud

The Court finds that Mr. Timpson has failed to prove this claim. There was no persuasive evidence of a confidential relationship or the use of extraordinary influence in Mr. Timpson's decision to build on UEP property. Mr. Timpson exercised his own ability to choose and was not mislead by representations or lack of information from the defendants. His decisions were motivated by religious beliefs, not the influence of defendants. If he chose unwisely it is because he

failed to take of advantage of his known opportunities to inform himself.

Unjust Enrichment

The Court finds that Mr. Timpson has proven his claim for unjust enrichment for the same reasons stated in analyzing the claims of other plaintiffs. The Court will enter a declaratory judgment providing Mr. Timpson with the same relief, and subject to the same limitations as previously afforded the other plaintiffs under this claim.

RELIGIOUS ISSUES

In their memoranda the parties argue that the Court must apply neutral legal principles in deciding the issues in this case. Each has a different understanding of the meaning of that phrase and its application in this case.

The U.S. Supreme Court has provided the following direction which the Court finds helpful in this case. In *Maryland & Virginia Eldership of Churches of God v. Church of God, Inc.*, 396 US 367; 90 S. Ct. 499 (1970) the Court said,

> "There is no violation of the establishment clause of the First Amendment in the use of civil courts by religious organizations to decide disputes, particularly property disputes, but civil courts may not become involved in determining ecclesiastical or doctrinal questions."

Thereafter, in *Reardon v. Lmoyne*, 122 N.H. 1042; 454 A.2d 428 (1982) it was held,

"Civil courts are permitted to consider validity of non-doctrinal contracts for claims which are raised by parties to contracts with religious entities, and this requires courts to evaluate pertinent contractual provisions and extrinsic evidence in cases of ambiguity, to determine whether any violations of contract have occurred, and to order appropriate remedies, if necessary."

Then in *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85; *cert. denied,* 107 S. Ct. 102 (1986) the holding was:

"In determining property rights of local church which succeeds from the national church, civil courts may examine religious documents that intertwine religious concepts with matters otherwise relevant to the issue of who controls property with the restriction that courts must defer to a church's authoritative resolution of any doctrinal issue necessarily involved in interpreting or applying provisions of such documents."

The Court has attempted to apply these principles in the trial of the issues presented in this case. The Court has ruled on the legal claims of the parties taking into consideration the religious setting in which the dispute arose but has decided the case using neutral principles of law which have no relationship to the religious disputes in the case, which are not before the Court and which this Court could not decide under the provisions of both the United States and Utah Constitutions. The Court has ruled throughout these proceedings that the issues it will address have nothing to do with which ward is the "true" successor to The Work, or like questions. Those are religious issues and are beyond the jurisdiction of this Court.

CONCLUSION

The plaintiffs' counsel is to prepare and submit for signature a declaratory judgment in accordance with the rulings contained herein and pursuant to the applicable Rules of Civil Procedure and provisions of the Code of Judicial Administration. The judgment is to contain the Court's rulings adverse to the plaintiffs as well as those favorable.

DATED this 11th day of January 1996.

J. PHILIP EVES, District Court Judge

APPENDIX B

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

UNITED EFFORT PLAN, *et al.*, Plaintiffs,
vs.
STUBBS, *et al.*, Defendants.

MEMORANDUM OPINION

CASE NO. 890502850 CV

This case came before the court for oral argument on August 12, 1996, on four pending post-trial motions. The plaintiffs were represented by Mr. Reid Lambert and the defendants by Mr. Raymond Scott Berry, Mr. Reed L. Martineau and Mr. Rodney R. Parker. Two motions were summarily granted, by agreement, from the bench and Mr. Berry was ordered to prepare and submit appropriate forms of orders setting out the decisions. The other two motions, the defendants' Motion to Dismiss the 6th Claim for Relief (hereinafter referred to as the Motion to Dismiss) and the defendants' Motion to Alter or Amend Memorandum Decision and Final Judgment to Address Omitted Issues Pursuant to Rule 60 *U. R. C. P.* (hereinafter referred to as the Motion to Alter), were taken under submission. The court, being fully advised in the matter, now writes to decide these two motions.

MOTION TO DISMISS

During the trial and in related pleadings and motions in this matter, the defendants raised and argued issues as to the applicability to this case of the Religious Freedom Restoration Act of 1993.[1] The court held in its Memorandum Opinion that the act was not applicable to the issues in this case, but probably did not accord to the issue as full a discussion as the defendants wished. By this Motion the defendants apparently seek clarification and amplification of the court's views on the applicability of this provision of Federal law. They argue again that the court should dismiss the unjust enrichment claims of the plaintiffs and allege that the relief sought, and now the relief awarded by the court, constitutes an impermissible "substantial burden" on the defendants' free exercise of their religion and is without a compelling state interest and is not the least restrictive means available for furthering any existing governmental interest. The defendants' Motion is, of course, opposed by the plaintiffs.

The court is of the view that its decision in this case does not substantially burden any person's free exercise of religion, that even if there is some burden it is incidental and is justified by a compelling state interest and that the approach taken by the court is the least restrictive means available to further that interest.

Both parties cite the same case for the definition of what constitutes a "substantial burden" within the meaning of the Act. In *Sasnett v. Sullivan*, 908 F. Supp. 1429 (Wis. 1995) it was determined that to be a substantial burden, the government action must: significantly inhibit or constrain

---

[1] See 42 USC 2000bb *et. seq.* attached as exhibit 1.

conduct or expression that manifests some central tenet of a (person's) individual (religious) beliefs; must meaningfully curtail a (person's) ability to express adherence to his or her faith; or must deny a (person) reasonable opportunities to engage in those activities that are fundamental to a (person's) religion.

Defendants take the position that the court's decision granting equitable relief on the grounds of a claim of unjust enrichment is violative of this definition. The defendants struggle in specifying, however, and the court fails to see, just how the court has burdened the free exercise of religion within the above stated definition of those terms. Nothing that the court has done in fashioning an equitable remedy to resolve the dispute between the United Effort Plan Trust and those who occupy its lands infringes in any way upon the religious practices, beliefs, activities or expressions of adherence of members of any religious group.

The defendants seem to argue that their right to practice a religious principle called the United Order is impaired by the fact that those who are not members of their faith are occupying land which belongs to a trust administered by leaders of their church. The defendants have presented no evidence in these proceedings to demonstrate that assertion. The evidence does indicate that the United Order is a goal of the defendants' church but that it is not being lived presently nor was it being lived when the plaintiffs were allowed by the trust to occupy UEP land and build improvements thereon. The evidence also was that the trustees have and do allow non-members to continue to reside on UEP land independent of the court's decision. No evidence was presented as to what constitutes the United Order and how the practice of that principle would be impacted adversely by the presence of nonbelievers in the community. The fact that the

adherents of a religion may wish to live among others who believe similarly does not mean that they have the right to remove non-believers from their midst nor does the evidence in this case indicate that the defendants' church so teaches. In fact, the evidence is that the defendants' church has taught that those who move onto UEP land and then become estranged to The Work will become discouraged and leave by themselves, without the need of removal by the faithful. Therefore the court fails to see that a part of the United Order principle has been burdened by the remedy fashioned by the court.

The defendants also assert that their religious practice is somehow infringed by the fact that non-members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints are living on UEP land by order of the court rather than under the direction of the trust. It is important to note that the court did not place the non-believers in possession of the United Effort Plan's land. The trust, or its representatives, decided who could live on the land and under what circumstances. Unfortunately, the trust did not make clear to the occupants of the property that their right to stay on the property was limited by various factors, including faithfulness to the same religious beliefs as the UEP's trustees espouse. The occupants have now constructed improvements on the property at considerable expense which would be forfeit if the occupants were required to simply vacate the UEP's land.

The issues presented to the court, and which both sides asked the court to decide, raised questions as to the relative rights of the UEP and those occupying UEP property in view of the situation they had jointly created. The court sought in its decision to define and clarify the rights of all parties under concepts of equity and to allow the UEP and the occupants of

its land to continue to co-exist without further contention or hostility. In doing so the court sought to apply non-religious, neutral principles of law. The court specifically avoided making decisions about the religious practices of the parties or their religious differences.

This court fails to see how the application of neutral legal and equitable principles to resolve an important civil dispute involving significant property rights and issues has created any burden, let alone a substantial burden, on any person's free exercise of religion. The adherents to the UEP's views are still free to practice their religion in full. The court's decision simply means that if the trustees of the UEP wish to remove those living on UEP land, for what ever reason, they will have to compensate them for the value of the improvements acquired by the UEP in the process. That may mean that the UEP will incur additional expense to remove these occupants but that does not create a substantial burden on anyone's free exercise of religion. (See *Messiah Baptist Church v. City of Jefferson, Colorado*, 859 F.2nd 820.) Of course, if the UEP does not desire to pay for the improvements installed on its land by those the UEP allowed to occupy UEP land, then the UEP need only wait until the occupant abandons the improvements or dies and the land and the improvements revert to the UEP without compensation to the occupant or the estate or the survivors of that occupant.

It appears that the UEP is really arguing that anything the court does that interferes with its desire to conduct its affairs as it sees fit is a violation of the Act. The court sees the purpose of the act differently. The act does not prohibit government regulation of religious organizations. In fact, it contemplates that there will be general laws which apply to the activities of such organizations. The act simply prohibits

regulation that interferes in a substantial way with the ability of a person to practice his or her religious beliefs, unless a compelling interest of the state is demonstrated and the state is properly restricted in the application of its laws to that person.

The court has held herein that there is no burden on free exercise of religion in this case but assuming for argument's sake that there is a substantial burden, the court is also of the opinion that any such burden is clearly justified by a compelling state interest in resolving issues relating to real property rights. Our constitutions, state and federal, secure to all citizens certain rights which are considered basic. Among those are the right to due process of law before being deprived of property and equal protection of the law. The plaintiffs in this case are entitled to those protections in this case where the opposing party is a legal entity set up to further religious goals just as they would be if the opposing party were any non-religious entity. The issues decided here involve basic property rights and are typical of disputes routinely heard and decided by courts across the country. The state has the obvious and compelling interest of providing a forum and a mechanism for the resolution of disputes about such matters, regardless of the involvement of a religious organization. The property laws of the state must apply to religious organizations as well as to non-religious litigants. If the law were to be applied otherwise churches could not acquire title to property, or convey title to others, or protect their lands and rights. Clearly the state has an interest in assuring that all of its citizens. religious and otherwise. enjoy protection for the basic rights afforded by citizenship in this country and any the states.

Although Mr. Berry has decried the use of examples to clarify this argument, the court finds them instructive on

occasion. For example, suppose the religious organization in question believed in the practice of ritualistic human sacrifice and sought to subject members or non-members to murder during such worship services. There can be little doubt that the state would be able to interfere with such practices and declare them illegal and to punish those participating in such activities. The right to life, established in our Constitutions as a paramount right of citizenship must take priority over the right to practice religion.

Likewise the rights afforded in a society of law, such as due process, equal protection of the law, the right to own property and the ability access a forum to resolve property disputes under universally applicable and neutral law must be recognized as having priority over an individual's right to free exercise of his or her religion. The state has a compelling interest in enforcing the rule of law in our society.

In deciding this matter the court has adopted the very least restrictive approach in developing an equitable remedy. The decision recognizes the rights of the occupants in the permanent improvements which they have installed on UEP land but gives the UEP ownership and ultimate control over the use of the land it owns. If the UEP wants to divest an occupant of the possession given by the UEP, it can be done but the UEP is required to pay for the benefit it receives in the process. No one has been able to suggest a less restrictive approach to the problem. The only approach less restrictive would be for the court to simply turn its back on the situation, refuse to determine the rights of the parties and let the parties battle it out among themselves. Ultimately, for one side or the other, and maybe for both, that approach would ultimately prove more costly than the one adopted by the court.

For the reasons stated here, the court denies the Motion to Dismiss brought by the defendants. Mr. Lambert is to prepare the appropriate order.

MOTION TO ALTER

Following the trial and the memorandum decision in this case, the defendants filed their Motion to Alter in which they seemed to intimate that the court omitted certain issues before it when the case was decided. The issues identified, *ie*: the payment of taxes, past and future, and the future construction of improvements on UEP lands were not tried[2] and were not part of the issues submitted to the court. The court did not omit discussion on these points. These questions arise now as after thoughts because of the equitable remedy fashioned by the court. Nonetheless, the court will address these issues in this opinion because they will have to be resolved at some time if the parties are to know their positions on these issues and co-exist under the court's declaration of equitable relief.

These issues have now been briefed and the parties have argued the matters in the presentation of this motion. The court is of the opinion that further presentation of evidence would not clarify the issues. The questions presented are principally legal questions which the court should answer as a part of its comprehensive decision in this matter.

By way of prefacing the discussion of the issues, a bit of history may be helpful. As each of the plaintiffs took

---

[2] The court did hear evidence on the history of tax assessment and collection among those occupying UEP lands. However, there was no claim in the pleadings for recoupment of those taxes and that issue did not surface during the trial.

possession of the UEP property for the first time, each did so knowing that they were building on land which belonged to the UEP. Each knew there were specific limitations on the right to use the land. Each knew that the permission of the owner was needed, both to move onto the land and to construct improvements thereon. All sought and obtained that permission.

Each plaintiff also knew that the primary obligation to pay the property taxes on the UEP land lay with the persons occupying the land and the general membership of The Work would be called upon to contribute tax money to the UEP only if those occupying the land could not pay the taxes. Even after the division between the parties arose, some of the plaintiffs tried to discharge that obligation by offering to pay the taxes through the UEP. Their offers were refused by the UEP on advice of their legal counsel, but there can be no doubt that the plaintiffs understood the taxes to be their responsibility. They had been faithfully billed over the years and clearly understood their position in that regard.

There is no reason, in law or equity, in the view of this court, why the plaintiffs should now be relieved of the responsibility for taxes on the property they occupy and the improvements constructed thereon or appurtenant thereto. The court orders that the plaintiffs pay those taxes. The payments are to be made through the UEP under the provisions and on the terms following.

In deciding the procedure for the assessment, notice, collection and handling of the tax payments, as well as the procedures dealing with non-payment, the court has tried to allow the plaintiffs adequate time to prepare for the payment of taxes and to redeem themselves from the failure to pay, should such a situation arise. However, the court is of the

opinion that the owner of the property should not be burdened with the payment of taxes for occupants of the land, especially where the occupants remain by order of the court and against the wishes of the UEP. It is also quite obvious that the occupants who are plaintiffs in these consolidated cases can no longer expect the UEP to look to the membership of the Fundamentalist Church of Jesus Christ of Latter-Day Saints to contribute to the payment of taxes, since these plaintiffs no longer belong to that same religious organization. Therefore, the procedures following will be more accelerated and perhaps more harsh that those accorded persons paying taxes on their own land under the laws of Utah or Arizona.[3]

The procedure will be as follows. For each tax year the UEP will make arrangements to obtain from the county governments assessing taxes against UEP land, as soon as possible after the final assessment notices are issued, an individual listing of the taxes assessed to each occupying plaintiff's holdings. Within 10 days after those individual listings are available, the UEP will notify each person occupying land under this court's judgment, of the amount of taxes assessed against the UEP for which the occupant is responsible and the due date for payment. The date for payment shall be the same date for payment imposed upon the UEP by the taxing authority.[4]

---

[3] The court has conferred with officials of county government in both Utah and Arizona to determine their procedures under state law for the taxation of land.

[4] In Utah, the Notice of Property Valuation and Tax Change is issued in July, advising the taxpayer of the likely amount of taxes to be paid by November 30 of that same year. The actual Tax Notice, finally setting the amount to be paid, goes out in October. The UEP would be obligated to give notice to the occupants in Utah of taxes owed with the October Tax

The occupants of UEP land shall pay to the UEP, in lawful currency of the USA, their proportionate share of the UEP tax assessments on or before the date the taxes are due from the UEP to the taxing entity. Any taxes not paid by the due date will be delinquent and will be subject to interest at the highest rate allowed by law from the due date forward. The UEP shall maintain records of payments received and issue receipts for payment. The UEP will also issue notice to the occupants annually, within 30 days after the tax due date, of those taxes not paid and delinquent.

In the event that any occupant of UEP land under this court's judgment fails to pay the proportionate share of taxes assessed to his holdings, then the UEP may pay those taxes to the taxing entity to preserve its interest in the land. The UEP will allow a grace period of 3 months after the taxes become delinquent before commencing collection efforts except that interest shall be added to the amount due during that 3 month period. If the taxes have not been paid current during the 3 month grace period, the UEP may then file suit against the occupant in any court of competent jurisdiction and obtain a judgment against the occupant for the delinquent taxes plus interest at the highest rate allowable by law and costs of court. The judgment may be collected in the same way as any judgment under the law, excluding foreclosing the occupant's interest in UEP lands under this court's judgment. The occupant may, of course, avoid the loss of his or her interest in the use of the UEP land by paying the

---

Notice each year.

In Arizona, the tax notices for year 3 go out in November of year 1. The taxes are payable in March (1/2) and October (the remaining balance) of year 3. The UEP would be obligated to give notice of the taxes payable as soon as the amount of the taxes was finally communicated to them by Mojave County.

delinquent taxes, plus accumulated interest, at any time prior the filing of a suit to remove the occupant from UEP land, as set out hereafter.

However, in the event that the occupant fails to satisfy any judgment obtained under these provisions for 3 years after its entry, or fails to pay delinquent taxes for 4 years after the initial due date, which ever comes first, the UEP may seek through the courts to remove the non-paying occupant from UEP land based on the delinquent taxes. The failure to pay taxes within the time frames provided herein shall constitute an adequate basis in equity to allow the UEP to remove an occupant and to require the occupant so removed to forfeit any interest in the UEP land or the improvements thereon.

The remaining issue raised in the Motion to Alter is the question of future improvements. The plaintiffs herein seek to be allowed to install improvements on UEP land and to bring those future improvements under the provisions of the court's decision in this matter. The UEP opposes the installation of further improvements on its lands without its permission. The UEP also reasons that the installation of future improvements would increase the financial burden on the UEP if, in any individual case, the UEP decided to exercise its option to remove an occupant by paying for the value of the improvements.

The court has found, as factual determinations, that the plaintiffs herein knew that they were building upon the land of the UEP and that permission to do so was required. These plaintiffs also knew that the nature and extent of the improvements were subject to that same permission from the owner of the land. The UEP apparently exercised closer supervision over some plaintiffs than others as improvements were installed but it was always understood by these plaintiffs that

they were building with the express or implied permission of the owner of the land. That permission has now been revoked by the UEP in the cases of these plaintiffs.

The plaintiffs argue in their response to this Motion that the usefulness of their occupancy of the land would be seriously impaired if they could not build future improvements as their families grow or other needs present themselves. Nothing that the court has done in deciding this case should be construed as conferring upon the plaintiffs the right to use the UEP's land in that fashion. The case decided by the court dealt with existing improvements, not future improvements. The court was never presented with, nor did it consider, a claim that the occupants of UEP land had the continuing right to construct improvements on UEP land, even over the UEP's objection.

The court is aware, however, that neither side in this case would benefit from the deterioration of the existing improvements due to the effects of time, weather, waste, accidents, or normal wear and tear. The occupants of the existing improvements need have some latitude to maintain the improvements so that the use of those existing improvements is not impaired. On the other hand the UEP will not want to be left with dilapidated and useless structures on the land when the ownership of those improvements passes to the UEP. A simple refusal to allow any future improvements would certainly not be in the best interests of either party.

The law in this area is straight forward. The right to regulate the installation of improvements on any land belongs to the owner of the land. Under the provisions of the Uniform Building Code and the local and state legislative enactments applicable, the occupants of this land would not be able to obtain building permits for improvements unless

the UEP sought the permit as the owner of the land. No permit should be issued to anyone to build on someone else's land without the owner's permission.

The court now orders that the plaintiffs herein shall not construct improvements on UEP land if under applicable law[5] the project requires a building permit, without the express written permission of the UEP. Any project which an occupant of UEP land wishes to undertake shall be submitted to the UEP for approval before it is submitted to any governmental authority or agency. The court trusts that the UEP will give fair and full consideration to these requests as they are received and will allow those that impose no important additional burden to the UEP and its future plans for the use of its land.

The court also orders that occupants of the UEP land may perform maintenance and construct improvements not requiring a building permit under applicable law, but must notify the UEP of the intent to do so at least 7 days before any work on the project occurs so that the UEP can inspect and catalogue the existing improvements and the new improvement or maintenance project.

---

[5] The applicable law will vary to some degree based on the State where the land is located, and the local law which applies to that particular parcel of land. The court is informed that the Uniform Building Code has been adopted by the Counties of Mojave and Washington, as well as the Cities of Hildale and Colorado City, but perhaps with some different modifications. These governmental entities have also passed ordinances of various types which may impact on the need for a building permit in any instance. The determination of the applicable law must be made then on a case by case basis by the parties. The UEP should bear the ultimate responsibility to assure that those laws are applied properly upon UEP land.

The court also orders that the UEP shall not be responsible, in the calculation of any value it obtains by application of this court's decision in these consolidated cases, to pay for the value of any improvement installed on UEP land by any of these plaintiffs after the filing date of the plaintiffs' lawsuit against the UEP or the date when the plaintiff in question can be shown to have received actual notice that no further improvements should be constructed on UEP land, which ever date is earliest.

In the event that any plaintiff constructs unapproved improvements on UEP land without complying with the procedures set out above, the UEP is hereby authorized to seek to evict that plaintiff by judicial proceedings and, if successful, can be awarded costs and attorney fees as consequential damages for the failure to comply with this court's order.

DATED this 5th day of September, 1996.

J. PHILIP EVES,
District Court Judge

APPENDIX C

IN THE UTAH SUPREME COURT

Rulon T. JEFFS, Kenneth Steed, James K. Zitting, Fred M. Jessop, Winston K. Blackmore, LeRoy S. Jeffs, Truman I. Barlow, and Parley J. Harker, trustees for the United Effort Plan, a Utah Trust, Plaintiffs, Appellants, and Cross-Appellees,

v.

Cora Fischer STUBBS, David L. Stubbs, John M. Williams, Merrill Harker, Harvey J. Dockstader, T. David Dockstader, Fayila M. Williams, Marko J. Dutson, Ray D. Timpson, George R. Hammon, Don D. Timpson, J. Legrand Hammon, John W. Timpson, Claude Cooke, Cyril Bradshaw, J. Michael Pipkin, Connell Bateman, Thomas J. Williams, Benjamin Bistline, Donald B. Cox, Defendants, Appellees, and Cross-Appellants.

No. 960454.

September 1, 1998.

ZIMMERMAN, Justice:

This case involves a dispute over the occupancy of land between twenty-one individuals ("the claimants") and the United Effort Plan Trust ("the UEP"). The claimants built improvements on land located in Hildale, Utah, and Colorado City, Arizona, which they occupy but which is owned by the

UEP. Claimants filed an action in Washington County, Utah, to determine their rights in the UEP land they occupy.

Claimants asserted ten causes of action: for relief under the Utah Occupying Claimants Act, for breach of express contract, breach of implied contract, negligent misrepresentation, constructive fraud, estoppel, unjust enrichment, breach of fiduciary duty, accounting, and distribution of trust. The trial court separated the first seven claims relating to the claimants' property rights for trial, holding in abeyance the three trust-based issues. After trial, the court relied on an unjust enrichment theory to hold that the claimants were entitled to occupy the UEP land during their lifetimes or to receive compensation for the improvements they made. The court imposed a constructive trust in favor of the claimants. The trial court denied relief on the three trust-based claims because it concluded that the UEP was a charitable and not a private trust.

Each party appealed. The UEP argues that (i) the trial court erred in awarding claimants a continuing interest in the land on an unjust enrichment theory and (ii) giving the claimants a continuing interest in the land infringes on the remaining UEP members' free exercise of religion and therefore violates the Utah and United States Constitutions. On their cross appeal, the claimants argue that the trial court erred (i) by applying the wrong legal standard to their claim under Utah's Occupying Claimants Act ("the Act") and (ii) in finding that the UEP is a charitable trust. We reject the UEP's arguments, affirm the trial court's unjust enrichment ruling, reverse its conclusion that the trust is charitable, reverse its interpretation of the Utah Occupying Claimants Act, and remand for further proceedings. Before proceeding

to our analysis, we set forth the facts taken from the trial court's extensive findings.

Sometime in the late nineteenth century, some members of the Church of Jesus Christ of Latter-Day Saints organized a movement called the Priesthood Work ("The Work") to continue the practice of plural marriage outside that church. In the early part of this century, The Work's leadership—the Priesthood Council—decided to settle its membership in an isolated area to avoid interference with their religious practices. In approximately the 1930s, The Work selected an area composed of Hildale, Utah, and Colorado City, Arizona—an area now known as Short Creek. The Priesthood Council secured a large tract of land in this area, and adherents of The Work began to settle there.

The Work continued to secure additional land in the area. Commonly, its adherents bought land and deeded it to The Work. Eventually, the leadership of The Work formed a trust to hold title to the land. This trust failed, and, for the most part, the land was deeded back to those who contributed it. In 1942, the Priesthood Council signed and recorded in Mohave County, Arizona, a Declaration of Trust for the United Effort Plan. After the Priesthood Council formed the UEP, adherents deeded most of the land that had been held by the first trust to the UEP. Over the years, the UEP acquired more land as adherents obtained and deeded it to the trust. The UEP currently owns all the land occupied by the claimants.

From its inception, the UEP invited members to build their homes on assigned lots on UEP land. Through this system, the UEP intended to localize control over all local real property and to have the religious leaders manage it. Members who built on the trust land were aware that they

could not sell or mortgage the land and that they would forfeit their improvements if they left the land. However, the UEP did encourage its members to improve the lots assigned to them and represented to its members that they could live on the land permanently, by using such phrases as "forever" or "as long as you wanted." The leaders also told members that having a home on UEP land was better than having a deed because creditors could not foreclose upon the land for members' debts.

Sometime during the late 1960's or early 1970's, dissention over a doctrinal issue arose among adherents of The Work, causing a split in the Priesthood Council. The dissension broke into the open in 1984 when adherents of The Work split into two groups: one group, led by Rulon T. Jeffs ("Jeffs"), acquired control of the UEP. A second group, led by J. Marion Hammon and Alma Timpson, includes most of the claimants in the present case.[1]

In 1986, Jeffs declared that all those living on UEP land were tenants at will. Before this declaration, neither the UEP nor any of its representatives had told the claimants that they were tenants at will. In 1987, the claimants filed an action in the Federal District Court for the District of Utah, asking the court to determine their rights in the property. The UEP, in turn, filed an unlawful detainer action and several quiet title actions against some of the claimants in state court in 1989 and 1993. The state court stayed these cases pending resolution of claimants' federal action. In 1993, the federal district court dismissed the federal claims for lack of subject matter jurisdiction and dismissed the pendent state law claims without prejudice. Shortly thereafter, the claimants

---

[1] Some of the claimants now claim no affiliation with either group.

filed an action in Utah's district court in Washington County. The state court consolidated their action with the UEP's previously filed unlawful detainer action and several quiet title actions.

In these consolidated actions, the claimants presented a number of claims, the most pertinent of which is that they are entitled to their lots under the Utah Occupying Claimants Act, see Utah Code Ann. §§ 57-6-1 to -8, and, alternatively, that the UEP has been unjustly enriched by their improvements to the land. After a bench trial, the judge made findings of fact and granted claimants relief only on their unjust enrichment claim. It found as a matter of statutory interpretation that they were not covered by the Utah Occupying Claimants Act.

On appeal, the claimants argue that the trial court erred in applying the Act. They also argue that the trial court erred in finding that the UEP is a charitable, not a private, trust—a finding that precluded claimants from prevailing on their claims related to the conduct of the trustees. For its part, the UEP asserts that the trial court erred in granting claimants equitable relief, primarily because application of equitable principles to a religious organization violates the Utah and United States Constitutions. We address each issue in turn.

The standard of review for the trial court's interpretation of the Act is straightforward.[2] Because a district court's interpretation of a statute is a legal question, we review its ruling for correctness. *See MacKay v. Hardy*, 896 P.2d 626, 630-31 (Utah 1995). On the other hand, we uphold a trial

---

[2] Only claimants occupying land situated in Utah have an action under Utah's Occupying Claimant Act. Arizona has no counterpart to this statute.

court's findings of fact unless they are "clearly erroneous." *See Drake v. Industrial Comm'n of Utah*, 939 P.2d 177, 181 (Utah 1997). Because appellant did not provide a trial transcript on appeal, we assume competent and substantial evidence supported the trial court's extensive factual findings. *See Goodman v. Lee*, 589 P.2d 759, 760 (Utah 1978) ("When no transcript is furnished on an appeal it is presumed that the evidence given was sufficient to sustain the judgment."); *Walker Bank & Trust Co. v. Neilson*, 26 Utah 2d 383, 490 P.2d 328, 329 (Utah 1971) ("The appellant elected not to bring before us any of the testimony presented to the trial court, and so we must presume such findings as were made to be based upon competent and substantial evidence."). Therefore, we will not overturn the trial court's factual findings. The determinative issues are, then, issues of law.

The first question is whether the trial court correctly interpreted the Utah Occupying Claimants Act. Section 57-6-1 of the Act provided:

> Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in proper action found not to be the owner, no execution shall issue to put the plaintiff in possession of the same after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with.

Utah Code Ann. § 57-6-1 (1994) (emphasis added).[3] This statute requires occupying claimants to show that they (i)

---

[3] Section 57-6-1 was amended in 1995, changing "plaintiff" to "owner" and making stylistic change. *See* Utah Code Ann. § 57-6-1 (Supp. 1997).

have "color of title" and (ii) made valuable improvements (iii) in good faith. *See Hidden Meadows Dev. Co. v. Mills*, 590 P.2d 1244, 1249 (Utah 1979). The district court found that the claimants had made valuable improvements. However, it did not determine whether claimants had color of title because it had first concluded that the claimants did not make the improvements in "good faith" as required by the statute.

We address the preliminary question of whether the claimants had color of title before addressing the determination that they lacked good faith. Section 57-6-4 of the Code defines "color of title." It states:

> [A]ny person has color of title who has occupied a tract of real estate by himself, or by those under whom he claims, [i] for the term of five years, or [ii] who has thus occupied it for less time, if he, or those under whom he claims, have at any time during such occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements thereon, or [iii] if he or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year, and two years have elapsed without a repayment of the same by the owner, and the occupancy is continued up to the time at which the action is brought by which the recovery of the real estate is obtained.

Utah Code Ann. § 57-6-4 (1994) (brackets and emphasis added).[4] Factually, categories (i) and (ii) cover all the claimants here. They either "occupied a tract of real estate ...

---

[4] The quoted language is now found in section 57-6- 4(2)(a) (Supp. 1997).

for the term of five years," or they, or those under whom they claim, have made "valuable improvements" to real estate "with the owner's knowledge or consent." *See id.* The facts found by the district court show that the UEP knew that all the claimants were improving the land and encouraged them to do so. In many cases, claimants obtained consent from The Work's leadership to improve the land. The claimants, therefore, have color of title.

The next requirement under section 57-6-1 is that the claimants show that they made the improvements in "good faith." The trial court found that they did not. In defining the statutory term, "good faith," the trial court relied on case law stating that "[t]he good faith of an occupying claimant must be premised upon a reasonable and honest belief of ownership." *Ute-Cal Land Dev. Corp. v. Sather*, 645 P.2d 665, 667 (Utah 1982). The trial court concluded that the claimants did not make the improvements in good faith because they had "not even claimed that they actually own the land they occupy" and because "they were installed upon the property of the UEP, knowingly by those who were using the land by permission." We conclude that the trial court erred in its interpretation of "belief of ownership."

The trial court appears to have assumed that "ownership" means possession of a fee simple interest in land. But it is settled law that " '[o]wnership' is a collection of rights to possess, to use and to enjoy property, including the right to sell and transmit it.... [T]he term owner is often used to characterize the possessor of an interest less than that of absolute ownership, such as ... a tenant for life." 63C Am.Jur.2d *Property* § 26 (1997). We have no reason to think that when the Act was passed the legislature intended to restrict the meaning of the term "ownership" to a narrower

class of interests in land than the general law would allow.[5] We therefore conclude that a good faith belief in a life interest in land satisfies the good faith requirement of the Utah Occupying Claimants Act.

In the present case, the claimants acknowledged that they do not hold fee simple title. But the evidence before the trial court is entirely consistent with the claimants' having a good faith belief that they were entitled to possess the property during their lives so long as they did not abandon the property. The law describes such an interest as a life estate, and a life estate is an "ownership" interest. *See id.*[6] On this point, however, we must remand the matter for additional specific findings as to claimants' beliefs of a life estate interest.

The claimants presented evidence that the UEP represented to them that they could occupy the land for their lives or for as long as they lived on the land. And the trial court concluded that these representations "could reasonably have created in [claimants'] mind[s] an expectation that [they] would be able to live out [their] days on the [UEP] land so long as [they] did not sell the land, mortgage it or abandon its use." But because the trial court believed the Act required a

---

[5] The only restriction intended by the legislature is indicated by the express language of section 57-6-1, stating that the Act should not be construed to create any ownership interest in a tenant against a landlord.

[6] Because the UEP represented to claimants that they could occupy the land for their lives, so long as they did not sell, mortgage, or abandon the property, the claimants' interest is actually a life estate subject to a condition subsequent. In other words, the UEP had both a reversionary interest, which vests upon the death of a claimant, and the possibility of reverter, which would only vest if a claimant sold, mortgaged, or abandoned the property. *See* Restatement of Property: Future Interests intro. n. & § 164 (1936).

good faith belief of a fee simple interest, it made no specific findings as to claimants' beliefs that they possessed a life estate interest. Absent such a belief, good faith would be lacking. If an appellate court determines that findings of fact are insufficient to support a necessary legal conclusion, the appellate court will normally remand the matter for further proceedings. *See Willey v. Willey*, 951 P.2d 226, 230 (Utah 1997). While we think the trial court would have made a finding of good faith belief in a life estate if it had been asked, we are not certain. Because it is not our place to find facts, *see id.* at 230-31 (citing *State v. Pena*, 869 P.2d 932, 936 (Utah 1994); *State v. Thurman*, 846 P.2d 1256, 1266 (Utah 1993)), we remand this issue to the trial court for additional findings and, if it deems appropriate, for additional evidence on the good faith issue.[7] If it concludes that some or all of the claimants have a life estate, then it should enter an order giving them a remedy under the Act.

This does not end this matter, however. Those claimants occupying land in Arizona have no remedy under the Utah Occupying Claimants Act. Therefore, we must still determine whether the trial court properly granted that group of claim-

---

[7] The Utah Occupying Claimants Act provides the following remedy once the court determines that an occupier had color of title and made valuable improvements in good faith:

> The plaintiff in the main action may thereupon pay the appraised value of the improvements and take the property, but should he fail to do so after a reasonable time, to be fixed by the court, the defendant may take the property upon paying its value, exclusive of the improvements. If this is not done within a reasonable time, to be fixed by the court, the parties will be held to be tenants in common of all the real estate, including the improvements, each holding an interest proportionate to the values ascertained on the trial.

Utah Code Ann. § 57-6-3.

ants an equitable remedy under Arizona law. Similarly, if on remand, the trial court determines that some or all of the Utah claimants did not have a good faith belief in a life estate, we must determine if the court properly granted these claimants an enrichment equitable remedy under Utah law.

The UEP argues that the trial court erred in granting claimants equitable relief for two reasons: first, a court cannot assess the equities between religious entities; and, second, because claimants knew that the UEP owned the land, there is nothing inequitable about the UEP's keeping the improvements without compensating the claimants. Before addressing these issues, we note that we will analyze the trial court's equity ruling under both Arizona and Utah law because the court's equitable remedy affects real property in both Arizona and Utah. *See* Restatement (Second) of Conflicts of Law § 235 (1971) (providing that existence of equitable interest in land is usually governed by local law of situs of property). Therefore, we review the ruling affecting Arizona land under Arizona law and the ruling affecting Utah land under Utah law.[8] Even though we

---

[8] Although the Utah and Arizona laws of unjust enrichment are very similar, we apply each state's law in deference to the general rule that the law of the situs applies. We also note that Arizona law recognizes the validity of a foreign state's rulings affecting Arizona land. In *Day v. Wiswall*, 11 Ariz. App. 306, 464 P.2d 626 (Ariz. Ct. App. 1970), the Arizona Supreme Court analyzed whether a foreign decree requiring a defendant to convey Arizona land or an interest therein is entitled to full faith and credit. *See id.* at 629. Concluding that an Arizona court would give such a decree full faith and credit, the court stated:

> If the defendant is personally before a court of equity, why doesn't the court have power to order him to convey foreign land? Such a decree is an effective judgment and determines conclusively his obligation to convey. This obligation remains binding on the defendant wherever found. Such a decree ought to be entitled to full faith and credit at the

apply the substantive law of two states, we still apply our own standard of review for all claims because standard of review is an issue inextricably tied to the forum, as we have previously noted. *See State v. Thurman*, 846 P.2d 1256, 1266-67 (Utah 1993). We now turn to our analysis.

The UEP first argues that the religious context of this case should prohibit a court from applying unjust enrichment principles. Essentially, the UEP argues that balancing the equities between the UEP and claimants is tantamount to judging the fairness of the UEP's religious practices and is therefore prohibited. We first note that under our Utah precedents, an issue of law, such as this, is reviewed for correctness and without deference to the trial court. *See Pena*, 869 P.2d at 936. On this law, we find nothing that would suggest that courts are not competent to hear cases involving religious entities.

Under both Arizona and Utah law, courts have broad authority to grant equitable relief as needed. *See Murdock-Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48, 703 P.2d 1197, 1202 (Ariz.1985); *see also Arizona v. Arizona Pension Planning*, 154 Ariz. 56, 739 P.2d 1373, 1375 (Ariz.1987) (*en banc*); *Commercial Cornice & Millwork, Inc. v. Camel Constr. Servs. Corp.*, 154 Ariz. 34, 739 P.2d 1351, 1356 (Ariz.Ct.App.1987); *American Towers Owners Assoc., Inc. v. CCI Mechanical*, 930 P.2d 1182, 1192-93 (Utah 1996); *Concrete Prods. Co. v. Salt Lake County*, 734 P.2d 910 (Utah 1987); *Baugh v. Darley*, 112 Utah 1, 184 P.2d 335 (Utah

---

situs of the land.

Id. Here, there appears to be no question that we have power to determine the parties' interest in land in Arizona.

1947). And nothing in the general rules of equity applicable in both states prohibits a court from deciding an equity case because the parties are religious entities. The UEP has cited no Arizona or Utah law suggesting that a court should limit the application of the doctrine of unjust enrichment solely because of the religious nature of the relationship and motivation of the UEP and claimants. And federal constitutional law imposes no such limitation. United States Supreme Court precedent suggests that courts may entertain property disputes between religious organizations. In *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), the Court stated:

> Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. But ... the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

Id. at 449, 89 S.Ct. 601. The limitations of which the Supreme Court spoke have no application here because no question of church doctrine is central to this case. We therefore conclude that in Arizona and Utah nothing prevents a civil court from hearing an ordinary equity case between

religious entities or factions, or between a religious entity and a private litigant.[9]

The UEP's second argument is that because the claimants knew they did not own the land, there is nothing inequitable about the UEP's keeping the improvements without compensating claimants. We first address the standard of review. The determination that the UEP was unjustly enriched by the claimants is a mixed question of law and fact. We uphold a lower court's findings of fact unless the evidence supporting them is so lacking that we must conclude the finding is "clearly erroneous." *See Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896, 899 (Utah 1989) (citing Utah R. Civ. P. 52(a)). As stated earlier, we assume competent and substantial evidence supported the trial court's findings because appellant did not provide a transcript on appeal. *See Goodman,* 589 P.2d at 760. In contrast, we review a trial court's conclusions as to the legal effect of a given set of found facts for correctness. *See Pena*, 869 P.2d at 936. Although we review legal questions for correctness, we may still grant a trial court discretion in its application of the law to a given fact situation. As we explained in *Pena*, we decide how much discretion to give a trial court in applying the law in a particular area by considering a number of factors pertinent to the relative expertise of appellate and trial courts in addressing those issues. *See id.* at 938-39. Factors weighing in favor of broad discretion include: (i) whether "the facts to which the legal rule is to be applied are so

---

[9] In declining to adopt the UEP's assertion that the religious context of the parties' relationship precludes an equitable award, we do not intend to avoid considering the effect of the parties' religious relationship on the appropriateness of the trial court's award, an issue raised by the UEP. However, we will consider that question, infra, when we determine the constitutionality of the district court's decision.

complex and varying that no rule adequately addressing the relevance of all these facts can be spelled out"; (ii) whether "the situation to which the legal principle is to be applied is sufficiently new to the courts that appellate judges are unable to anticipate and articulate definitively what factors should be outcome determinative"; and (iii) whether "the trial judge has observed 'facts,' such as a witness's appearance and demeanor, relevant to the application of the law that cannot be adequately reflected in the record available to appellate courts. *Id.* at 939. A factor weighing against broad discretion is whether there are reasons of policy that require standard uniformity among trial courts addressing the question. *See id.*

We will address each of the *Pena* factors to determine the degree of discretion appellate courts should confer on trial courts when reviewing the legal conclusion that a set of facts does or does not warrant a conclusion that unjust enrichment has been shown. First, the facts underlying an unjust enrichment claim are often complex and vary greatly from case to case. Indeed, by its very nature, the unjust enrichment doctrine developed to handle fact situations that did not fit within a particular legal standard but which nonetheless merited judicial intervention. *See* Restatement of Restitution, intro. n. (1937) (noting that narrow early common law causes of actions posed difficulties and required creation of chancery courts because "there were many situations in which one justly entitled to recover was not able to do so"). Because the fact patterns in unjust enrichment cases are generally complex and varying, the first *Pena* factor favors providing the trial court with broad discretion in applying the law to fact situations.

The second *Pena* factor addresses whether appellate courts have sufficient experience with an area of law and the

situation to which the law applies that they are capable of articulating clearly and definitely the outcome determinative factors. It is true that the unjust enrichment doctrine has ancient roots, and courts have had a great deal of opportunity to apply it. However, the court's ability to state clearly the outcome-determinative factors remains elusive. The Arizona Supreme Court, in discussing the equitable rules it applies, and which we apply here, notes the rules' indeterminativeness:

> The circumstances of this case are somewhat unique.... The Restatement of Restitution ... does not cover the factual circumstances presented by the case at bench. This is not determinative, however, because the remedy of restitution is not confined to any particular circumstance or set of facts. It is, rather, a flexible, equitable remedy available whenever the court finds that "the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity" to make compensation for benefits received.
>
> We have also recognized the rationale for restitutionary relief, stating that restitution ... is available "as a matter of reason and justice from the acts and conduct of the parties and circumstances surrounding the transactions, ... and [is] imposed for the purpose of bringing about justice without reference to the intentions of the parties.

Murdock-Bryant Constr., 703 P.2d at 1202 (citations omitted); *see also Commercial Cornice & Millwork*, 739 P.2d at 1356; *Arizona Pension Planning*, 739 P.2d at 1375. We cannot adequately predict in any detail the elements in a situation such as the present that will or will not definitely merit an unjust enrichment remedy. Therefore, this *Pena*

factor favors granting the court below a broad degree of discretion in applying the law.

The third *Pena* consideration is whether non-record evidence, such as demeanor, is available to the trial court and not the appellate court. Our discussion of the first two factors indicates that the record in an unjust enrichment case generally will not reflect considerations crucial to a trial court's ruling. This is particularly true when the trial court hears contradictory evidence from witnesses about the transaction's circumstances and must examine the relevance of each party's acts and conduct, and assess credibility and demeanor. The present case presents an unusual circumstance: the UEP did not provide a copy of the transcript from the six-week trial. This significantly impairs this court's ability to understand all the facts relevant to the trial court's ruling and gives us a further reason to conclude that in this case this factor favors broad discretion.

The fourth *Pena* factor, one countervailing to those favoring broad discretion, asks if there are policy reasons requiring uniformity among trial courts addressing these issues in similar fact circumstances. This factor seems weak in this case. First, fact situations will vary greatly in most unjust enrichment cases. Second, such a finding will not generally implicate substantial constitutional interests. *See Pena*, 869 P.2d at 938-39. We therefore find nothing here that would outweigh the factors favoring broad discretion. Unjust enrichment law developed to remedy injustice when other areas of the law could not. Unjust enrichment must remain a flexible and workable doctrine. Therefore, we afford broad discretion to the trial court in its application of unjust enrichment law to the facts.

We now turn to our analysis of the trial court's application of the law. Arizona recognizes the equitable remedy of unjust enrichment and generally provides that "'[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other.'" *Murdock-Bryant Constr.*, 703 P.2d at 1202 (quoting Restatement of Restitution § 1 (1937)). A person is unjustly enriched if (i) he received a benefit, and (ii) his retention of that benefit would be unjust. *See Flooring Systems, Inc. v. Radisson Group, Inc.*, 160 Ariz. 224, 772 P.2d 578, 581 (Ariz.1989) (en banc). We find that the trial court correctly concluded that claimants proved both elements.

Regarding the first element, the trial court found: "There can be no doubt from the evidence presented that [claimant] has conferred a benefit on the UEP by improving the lot." Arizona law defines a benefit as "any form of advantage." *Artukovich & Sons, Inc. v. Reliance Truck Co.*, 126 Ariz. 246, 614 P.2d 327, 329 (Ariz.1980) (*en banc*). In making its finding, the court relied on evidence showing that the claimants spent a considerable amount of money and time improving the UEP land, that these improvements increased the value of the land, and that the UEP will benefit from the increased value. We agree that this evidence supports the finding that the UEP received some advantage, and, thus, a benefit.

The claimants must also show that the UEP's retention of these benefits would be unjust. The UEP argues that because the claimants knew that the UEP owned the land and because the claimants intended to "donate" the improvements, they cannot recover. We disagree.

In determining whether it would be unjust to allow the retention of benefits without compensation, Arizona law provides that:

> a court need not find that the defendant intended to compensate the plaintiff for the services rendered or that the plaintiff intended that the defendant be the party to make compensation. This is because the duty to compensate for unjust enrichment is an obligation implied by law without reference to the intention of the parties. What is important is that it be shown that it was not intended or expected that the services be rendered or the benefit conferred gratuitously, and that the benefit was not "conferred officiously."

Murdock-Bryant Constr., 703 P.2d at 1203 (emphasis added) (internal citation omitted) (*quoting Pyeatte v. Pyeatte*, 135 Ariz. 346, 661 P.2d 196, 203 (Ariz.Ct.App.1983)); *see also Flooring Systems*, 772 P.2d at 581. Thus, under Arizona law, the trial court had to find that (i) services were conferred, (ii) the services were not conferred "officiously," and (iii) it was not intended that the services were "gratuitously" conferred. As we explained above, the trial court found that the claimants conferred a benefit on the UEP—they rendered services by improving the UEP lots.

As to the second element, the claimants plainly did not confer the services officiously. "Officiousness means interference in the affairs of another not justified by the circumstances under which the interference takes place." Restatement of Restitution § 2 cmt. a (1937). Thus, an officious person is one who "thrust[s] benefits upon others." *Id.* Here, the claimants did not interfere or thrust benefits on the UEP.

To the contrary, the UEP encouraged the claimants to improve the land. The trial court found:

> There can also be no doubt that the trust was aware of the benefit as its representatives encouraged the construction and the improvement of the lot by the occupant and watched the building going in. The issue is whether, given the facts of this case, it would be inequitable to allow the UEP to retain the benefit without compensation.... The Court is of the opinion that such a result would be inequitable.

Finally, the claimants did not confer their services gratuitously. One renders services gratuitously if at the time they were rendered, there was no expectation of "a return benefit, compensation, or consideration." Webster's New Int'l Dictionary 992 (3d ed.1961); see also 66 Am.Jur.2d, Restitution § 26 (1973). We conclude that because the claimants built the improvements with the intention that they could occupy them for their lifetimes, they did not confer them gratuitously.

The Restatement of Restitution, which Arizona courts follow in the absence of contrary authority, *see Bank of America v. J. & S. Auto Repairs*, 143 Ariz. 416, 694 P.2d 246, 248 (Ariz.1985), is instructive in determining whether one rendered services gratuitously. Section 40 provides:

> A person who has rendered services to another ... is entitled to restitution therefor if the services were rendered ... in the mistaken belief, of which the other knew or had reason to know, that the services would inure to the benefit of the one giving them....

Restatement of Restitution § 40 (1937). Thus, one who renders services with the reasonable expectation of a returned benefit does not render the services gratuitously. Section 42 of that Restatement, which limits a party's right to recovery for improvements to land,[10] specifies that section 40 applies when the true owner, "having notice of the error and of the work being done, stands by and does not use care to prevent the error from continuing." *Id.* § 42 cmt. b. A comment to section 40 clarifies that an owner "cannot retain a benefit which knowingly he has permitted another to confer upon him by mistake." *Id.* § 40 cmt. d.

The trial court concluded that the claimants "expected to use the property into the foreseeable future" and "[a]s a result [they] invested lots of money and time in the improvement of the property." The court also found that the claimants improved the land with the knowledge and encouragement of the UEP and with the understanding that they could remain on the land for their lifetimes. The court further indicated

---

[10] Section 42(1) of the Restatement of Restitution, governing improvements upon land or chattels, provides:

> Except to the extent that the rule is changed by statute, a person who, in the mistaken belief that he or a third party on whose account he acts is the owner, has caused improvements to be made upon the land of another, is not thereby entitled to restitution from the owner for the value of such improvement; *but if his mistake was reasonable*, the owner is entitled to obtain judgment in an equitable proceeding or in an action for trespass ... only on condition that he makes restitution to the extent that the land has been increased in value by such improvements, or for the value of labor and materials employed in making such improvements, whichever is least.

Restatement of Restitution § 42(1) (1937) (emphasis added). Thus, if a person who made improvements had a reasonable belief of ownership, the true owner may eject the party who made the improvements only after paying restitution for the improvements.

that the UEP failed to disabuse claimants of their beliefs that they could remain on the land for their lifetimes. The court stated:

> The UEP must bear a large share of the blame for the confusion as to the terms of occupancy since it did not communicate to [claimants] directly the conditions of [their] occupancy ... even though the trust was engaged in a long term and wide spread program of settling its people on UEP lands. It would have been easy to prepare a list of conditions of occupancy and to distribute the list to those preparing to invest heavily in improvements with the encouragement and agreement of the trust.

Applying the law to these facts, we conclude that the trial court's disposition was adequately supported by the evidence and was consistent with the Arizona substantive law. We therefore find that the trial court did not abuse its discretion in requiring the UEP to allow claimants to live on the land for their lifetimes or to compensate them for the improvements.

We next consider the trial court's unjust enrichment ruling under Utah law, as that law governs the claims of any Utah residents who may not be covered by the Occupying Claimants Act or for whom an equitable remedy is more favorable. Utah law, like Arizona's, recognizes the remedy of unjust enrichment. A party may prevail on an unjust enrichment theory by proving three elements:

> "'(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequit-

> able for the conferee to retain the benefit without payment of its value.'"

American Towers Owners, 930 P.2d at 1192 (citations omitted). Although these elements are phrased differently than Arizona's, we find the analysis to be much the same.

Regarding the first two elements, the trial court, as discussed above, found that claimants conferred a benefit by improving the property and that the UEP knew about, and, indeed, encouraged the improvements.

We addressed the third element in *Baugh v. Darley*, 112 Utah 1, 184 P.2d 335 (Utah 1947). This court stated:

> Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. The benefit may be ... beneficial services conferred....
>
> ....
>
> Services officiously or gratuitously furnished are not recoverable. Nor are services performed by the plaintiff for his own advantage, and from which the defendant benefits incidentally, recoverable.

Id. at 337 (internal citations omitted). Here, the claimants improved the land in reliance upon the UEP's representations that they could live on the land for the rest of their lives. Even though the claimants intended to benefit from the improvements by occupying them during their lifetimes, the claimants' services still conferred a direct, not incidental, benefit on the UEP. Thus, we uphold the trial court's

equitable remedy for all claimants, both those occupying land in Arizona and Utah.

The UEP next argues that the trial court's particular equitable remedy violates both article I, section 4 of the Utah Constitution and the First Amendment to the United States Constitution because the ruling burdens the free exercise of its members' religious beliefs. Specifically, the UEP asserts that the ruling is unconstitutional because it measures "religious expression against secular standards of fairness."[11]

When presented with a constitutional challenge to a law, we presume the law is valid. *See Society of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 920 (Utah 1993). A party mounting such a challenge bears a heavy burden to overcome this presumption, and " 'we resolve any reasonable doubts in favor of constitutionality.' " *Dennis v. Summit County*, 933 P.2d 387, 389 (Utah 1997) (quoting *Society of Separationists*, 870 P.2d at 920). Moreover, when a party asserts claims under both the Utah and federal Constitutions, this court ordinarily first determines the issue under the Utah Constitution and only resorts to the federal Constitution if the state constitution is not dispositive. *See West v. Thomson Newspapers*, 872 P.2d 999, 1004-07 (Utah 1994).

With this in mind, we first address whether the trial court's equitable ruling violates article I, section 4 of the Utah Constitution. It provides:

---

[11] The UEP also argued that the trial court's ruling violated the Religious Freedom Restoration Act of 1993. See 42 U.S.C. §§ 2000bb to 2000bb-4. However, we do not address this claim because the United States Supreme Court recently ruled that the act was unconstitutional. *See City of Boerne v. Flores*, 521 U.S. 507, ----, 117 S.Ct. 2157, 2172, 138 L.Ed.2d 624 (1997).

> The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.

Utah Const. art. I, § 4 (emphasis added). The UEP argues this section provides greater protection for religious institutions than the federal constitution. Accordingly, it asks this court to hold that any law that in any way burdens free exercise violates article I, section 4 unless the proponent of the law shows that it is supported by a compelling state interest and is the least restrictive means of accomplishing that end.

This proposed test does not come from the language of the constitution or from our case law, which has never addressed this question. Rather, the UEP grounds its proposed test on two United States Supreme Court decisions under the First Amendment's Free Exercise Clause, *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), and *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). It is noteworthy, however, that the Supreme Court's most recent cases decided under the Free Exercise Clause state that the compelling interest test of

Yoder and *Sherbert* is not the prevailing federal constitutional test. Rather, under the Free Exercise Clause of the First Amendment, a state law that incidentally burdens the exercise of religion is not unconstitutional so long as the law is not intended to burden free exercise, is of general applicability, and is otherwise valid. *See Employment Div. Dept. of Human Res. v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (stating that Supreme Court decisions "have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)' " (quoting *United States v. Lee*, 455 U.S. 252, 263 n. 3, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982)).[12]

We have never determined whether the free exercise clause of article I, section 4 of the Utah Constitution provides protection over and above that provided by the First Amendment to the United States Constitution. And we do not decide that question today: even if we assume, arguendo, that the compelling interest test the UEP proposes applies, the UEP cannot prevail on the facts of this case. Because the

---

[12] In *Smith*, the Court explained that the only decisions in which it had found a neutral, generally applicable law violated the First Amendment

> involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as ... the rights of parents ... to direct the education of their children, *see Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (invalidating compulsory school-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school).

Smith, 494 U.S. at 881, 110 S.Ct. 1595.

UEP's state constitutional claim fails under the more rigorous compelling state interest test, we need not consider the UEP's federal First Amendment claim because it is governed by the less rigorous test articulated in *Smith*. *See* 494 U.S. at 879, 110 S.Ct. 1595.

We now turn to an application of the compelling state interest test. Under the test advanced by the UEP, a facially neutral law may "offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Yoder*, 406 U.S. at 220, 92 S.Ct. 1526. However, a law that burdens free exercise is nonetheless constitutional if it furthers a compelling state interest and is the least restrictive means of accomplishing that interest. *See Yoder*, 406 U.S. at 214-15, 92 S.Ct. 1526; *Sherbert*, 374 U.S. at 406-408, 83 S.Ct. 1790; *see also Thomas v. Review Bd. of the Indiana Employment Sec. Div.*, 450 U.S. 707, 718, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). For purposes of applying this test only, we will assume that the trial court's ruling burdened the UEP members' free exercise rights.[13] Thus, we

---

[13] Both parties' briefs addressed whether the trial court's ruling imposed a "substantial burden" on free exercise. The claimants cite a Tenth Circuit case for its argument that before establishing a First Amendment violation, a party must first show a substantial burden on religious exercise. *See Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir.), *cert. denied*, 515 U.S. 1166, 115 S.Ct. 2625, 132 L.Ed.2d 866 (1995). The Tenth Circuit, however, decided *Werner* under the Religious Freedom Restoration Act ("RFRA"), which Congress passed in 1993. See 42 U.S.C. §§ 2000bb to 2000bb-4. RFRA provided:

> Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling

must determine if the court's ruling is the least restrictive means of accomplishing a compelling state interest. We conclude that it is.

A compelling state interest is a "paramount" interest, one of "the highest order." *Sherbert*, 374 U.S. at 407, 83 S.Ct. 1790. The UEP argues that the interest at issue is requiring one church body to maintain religious dissenters on church lands or monitoring the fairness of a religious program, and it argues that neither of these interests is compelling. The UEP, however, misstates the relevant interest.

We conclude that the state's interest here revolves around the judicial system, not the specific results of the judicial action. This is because the UEP contends that no remedy could be returned by the trial court on these claims without violating the state constitution. The state has a compelling interest in ensuring that all parties are able to resolve legal disputes before a neutral tribunal. Utah's open courts provision states: "All courts shall be open, and every person, for any injury done to him in his person, property or reputation shall have a remedy by due course of law." Utah const. art. I, § 11. This provision ensures that courts are to be accessible to all for the resolution of their disputes and makes clear that this right to come into court is a fundamental value of our governmental compact. *See Berry ex rel. Berry v. Beech*

---

governmental interest.

42 U.S.C. § 2000bb-1(b) (emphasis added). Even though both parties integrate the "substantial burden" requirement into their constitutional analyses, we need not decide if the compelling state interest standard applies only after a showing that the law imposed a "substantial burden" on free exercise. Instead, we can assume for this case only that the compelling interest test applies upon a showing that the law imposes any burden on free exercise.

Aircraft Corp., 717 P.2d 670, 675 (Utah 1985) ("The clear language of the section guarantees access to the courts and a judicial procedure that is based on fairness and equality."); *Bracken v. Dahle*, 68 Utah 486, 251 P. 16, 20 (Utah 1926) ("The right to apply to the courts for relief for the perpetration of a wrong is a substantial right."). While this clause may not guarantee any specific remedy, it certainly guarantees access to the courts. *See generally Berry*, 717 P.2d at 675.

If we were to accept the UEP's claim that we should refuse to resolve the claimants' case solely because of the assertion that Utah's courts cannot resolve disputes between religious entities, that refusal would deny this fundamental right to the claimants. In addition, such a refusal of a remedy alone might constitute an action violative of state or federal Establishment and Free Exercise Clauses. As one scholar has reasoned:

> Although the application of a unique set of legal principles developed in the context of the first amendment [and article I, section 4] jurisprudence may be required to evaluate the impact of governmental activity on religious concerns, these unique principles should not apply for resolving internal religious disputes. In such a dispute, the most important value to maintain is equality between religious factions. Without equality of treatment, courts risk establishing one religious faction at the expense of the free exercise of the other religious faction.

Patty Gerstenblith, *Civil Court Resolution of Property Disputes Among Religious Organizations*, 39 Am. U.L.Rev.

513, 515 (1990). Another scholar summarized the problem as follows:

> It would be simple indeed to deal with all these conflicts with a policy of noninvolvement.... But courts serve neither the church nor its members by placing their affairs in a special law-free zone. Law free is also lawless, and the consequence is that neither the faithful, nor the church or those with which it deals, can rely on the other parties playing by the rules, for there are then no enforceable rules.

Ira M. Ellman, *Driven from the Tribunal: Judicial Resolution of Internal Church Disputes*, 69 Cal. L.Rev. 1378, 1444 (1981). We conclude that courts must treat property disputes between religious factions "in the same manner they treat disputes among other voluntary associations." Gerstenblith, *supra*, 39 Am. U.L.Rev. at 520. In the present case, by resolving the dispute between the UEP and claimants, the trial court furthered the compelling state interest in keeping the courts open. Therefore, we find the UEP's claim would fail even if we were to adopt the test it suggests. The trial court's award was carefully crafted to be the least restrictive means available to further the state's compelling interest. The remedy provided the claimants redress for their injuries in a manner that minimizes the burden upon free exercise. The court's ruling allows the UEP to force the claimants off the UEP land at any time. The UEP need only compensate claimants first for the benefits it received. The court's adjudication of this matter did not violate article I, section 4.

We now turn to the claimants' cross appeal, which urges this court to reverse the trial court and hold that the UEP is a private trust, not a charitable trust. The claimants make this

assertion because the trial court's conclusion that the UEP trust is charitable denied claimants standing to assert their breach of fiduciary duty, accounting, and distribution claims. See Restatement of Restitution § 391 (1959).

The trial court based its conclusion that the trust is charitable on a number of facts: the trust states that it is charitable; the document designated no specific beneficiaries; that members of the trust have no entitlement to benefits because the trustees have discretion to distribute benefits as they see fit; and future members' consecrations to the trust buy them nothing. Specifically, the court stated:

> The Court has found, based on the evidence presented at trial and the clear language and unambiguous portions of the declaration, that the creators of the trust were motivated by their religious beliefs to create a trust to hold title to property donated by adherents to their religious faith, including themselves, and to engage in business enterprises for the benefit of the followers of the Work.

The trial court relied on extrinsic evidence relating to the intentions of the trusts' original settlors. However, in determining whether a trust is charitable, a court must look to the language of the trust instrument and may not look beyond it unless the instrument's language does not resolve the issue. *Cf. Olivas v. Board of Nat'l Missions of Presbyterian Church*, 1 Ariz. App. 543, 405 P.2d 481, 485 (Ariz.Ct.App.1965); *see also* Restatement (Second) of Trusts § 38 (1959) (providing that parol evidence rule applies to interpretation of trusts). Therefore, we review the language of the trust first. This review of the trust instrument is a question of law. *See In re Ferguson*, 929 P.2d 33, 35 (Colo.

Ct. App. 1996).[14] If we find no ambiguity, we need not consider the extrinsic evidence relied on by the trial court.

"A charitable trust is a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with property for a charitable purpose." Restatement (Second) of Trusts § 348; *see also State ex rel. Goddard v. Coerver*, 100 Ariz. 135, 412 P.2d 259, 263 (Ariz.1966). "A fundamental distinction between [private trusts and charitable trusts] is that in a private trust property is devoted to the use of specified persons who are designated as beneficiaries of the trust; whereas a charitable trust has as a beneficiary a definite class and indefinite beneficiaries within the definite class, and the purpose is beneficial to the community." *Olivas*, 405 P.2d at 485. Thus, a charitable trust has two essential requirements: indefinite beneficiaries and a purpose beneficial to the community.

We turn to the first element, the indefiniteness of the beneficiaries. In order to qualify as a charitable trust, the trust instrument must indicate that "the persons who are to benefit are ... of a sufficiently large or indefinite class so that the community is interested in the enforcement of the trust." Restatement (Second) of Trusts § 375. In a charitable trust, "the beneficial interest is not given to individual

---

[14] Because there is no conflict between the Utah and Arizona law governing this trust, we choose to apply Utah law. *See Morris v. Sykes*, 624 P.2d 681, 684 (Utah 1981) (holding that where no significant differences exist between Utah law and law of other states, "the court *may* properly apply Utah law in the absence of an affirmative showing that the law of [the other state] is different" (emphasis added)). However, we look to and adopt the reasoning of Arizona cases we find persuasive.

beneficiaries, but the property is devoted to the accomplishment of purposes beneficial to the community." *Id.* § 364 cmt. a. Thus, if a trust only names specific beneficiaries, the trust is not charitable even if it has a charitable purpose such as relieving the named beneficiaries from poverty, providing them education, or promoting their religious welfare. *Cf. id.* § 375 cmt. b; *id.* § 371 cmt. f (providing that "a trust for the religious benefit of persons designated by name ... is not a charitable trust").

The Declaration of Trust provides:

> it is understood and agreed that *we and such other members as may hereafter come into said association are associated together merely and solely for purposes of being cesti que trustents [sic] of the trust hereby created*, thus being entitled to equitable and beneficial interests of all profits and property, both personal, real and mixed, of the trust estate created, in accordance with their just wants and needs as determined from time to time by the Board of Trustees and as the trust estate may be able to respond thereto....
>
> *Membership in the trust estate is established for the signers of this instrument* ... by conveyance to the trust estate of the following property.... Evidence of membership shall be shown in the books of the association.
>
> Further and additional membership shall be established and added by the consecration of such property....

Declaration of Trust (Nov. 9, 1942) (emphasis added). Thus, the UEP trust document states that the signers of the

instrument became trust members and associated "for purposes of being cesti que trustents of the trust." Cestui que truste are "[t]he beneficiar[ies] of a trust." *Blacks Law Dictionary* 229 (6th ed. 1990). From its inception, the trust benefitted specific individuals. Therefore, the trial court erred in concluding that the trust had no specific beneficiaries and was charitable.

The trial court also relied on several other factors in concluding that the trust was charitable. These factors were that (i) the members received nothing for their consecrations, (ii) the document states that the trust is charitable, and (iii) the trust grants the trustees sole discretion to distribute benefits. We have reviewed these factors and conclude that as a matter of law, none of them make the trust charitable.

First, we cannot agree with the trial court that members' consecrations buy them nothing. The trust instrument clearly contemplates that beneficiaries must consecrate property to benefit from the trust. But that does not make it charitable. One scholar has noted:

> If members of a large group make contributions toward a common fund, to be administered by trustees, the income and capital to be used to furnish help to the contributors or their relatives if they are sick, disabled, or out of work, the courts do not treat the trust as charitable, but rather as a private trust or as giving contractual rights in the nature of insurance. They lay stress on the fact that the [beneficiaries] have purchased their benefits. It is said sometimes that in the case of a true charitable trust, those to be aided must be suppliants, and must take their benefits gratuitously.

George E. Bogert, *The Law of Trusts* 138 (4th ed. 1963). The UEP trust gives a beneficial interest to named individuals—the members. To become a member, an individual must consecrate property to the trust. We conclude that under these circumstances, the consecration requirement is not indicative of a charitable trust.

Second, we find the trust's declaration to be nondeterminative under the circumstances. The declaration states, "The purpose and object of the trust shall first be charitable and philanthropic." Declaration of Trust, ¶ VIII. In an Arizona case in which the language of a testamentary trust attempted to devise property to specific heirs and to create a charitable trust with the residue of the estate, the Arizona Supreme Court stated:

> although the clear intention of the testatrix was that the trustees ... should apply the residue of her estate in ways beneficial to the Town of Paonia, or the Paonia schools, her good intentions alone cannot create a valid charitable trust where the language of the clause makes it possible for the property to be devoted to purposes other than "charitable" as defined by the law.

In re Hayward's Estate, 65 Ariz. 228, 178 P.2d 547, 550 (Ariz. 1947). This reasoning applies here. Even though the settlors called the trust charitable, they structured the trust so that it would benefit specific individuals. In short, the settlors declared intentions cannot overcome other operative language in the trust making it a private trust.

Finally, we address the trial court's conclusion that the trust is charitable because the trust grants the trustees sole discretion to distribute benefits. We agree that the trust

language bestows such discretion; however, we disagree with the trial court's conclusion that vesting discretion in a trustee makes a trust charitable. The Restatement (Second) of Trusts provides that a settlor may create a discretionary trust. Comment d to section 128 provides: "By the terms of the trust it may be provided that the trustee shall pay to or apply for a beneficiary only so much of the income and principal or either *as the trustee in his discretion* shall see fit to pay or apply." Restatement (Second) of Trusts § 128 cmt. d (emphasis added). Thus, nothing prohibits a settlor from giving the trustee of a private trust discretionary power over distributions. Because that trust names specific beneficiaries and because nothing else in the trust overcomes the general rule that naming specific beneficiaries render a trust private, we conclude the UEP trust is private.

In conclusion, we uphold the trial court's equitable ruling allowing claimants to remain on the land for their lifetimes or requiring the UEP to compensate the claimants for the benefit it received if the UEP seeks to remove claimants. However, we find that the trial court erred in its interpretation of the Utah Occupying Claimants Act and that the findings are insufficient for us to determine whether any or all of the claimants have life estates. Further, we find that the trial court erred in ruling that the UEP trust is a charitable trust. Therefore, we remand that issue to the trial court for further proceedings consistent with this opinion.

HOWE, C.J., DURHAM, A.C.J., and RUSSON, J., concur in Justice ZIMMERMAN'S opinion.

STEWART, J., dissents.

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF UTAH

Rulon T. JEFFS, trustee for the United Effort Plan, a Utah Trust, et al., Plaintiffs, Appellants, and Cross-Appellees,

v.

Cora Fischer STUBBS, et al., Defendants, Appellees, and Cross-Appellants.

No. 960454.

ORDER

This matter is before the Court on Appellants' Petition for Rehearing. Appellants' petition is denied.

FOR THE COURT:

November 18, 1998 /s/ Richard C. Howe
Chief Justice

APPENDIX E

EXCERPTS OF STATE COURT RECORD

ANSWER TO COMPLAINT

The federal question was first raised in the affirmative defenses included in the petitioners' answer to the complaint initiating this action. Answer of United Effort Plan, *et. al.*, pages 13-18.

Twelfth Affirmative Defense

The United Effort Plan Trust is a religious subsidiary of a fundamentalist religious association, currently organized as the Fundamentalist Church of Jesus Christ of Latter Day Saints. Land owned by the United Effort Plan was donated as a religious consecration by faithful members of the Fundamentalist Church of Jesus Christ of Latter Day Saints, or purchased with the consecrated donations of church members. The Fundamentalist Church of Jesus Christ of Latter Day Saints and the United Effort Plan recognize a sacred obligation to ensure that these consecrations continue to be used to support the work of the Church.

The Trustees of the United Effort Plan are answerable only to the President of the Fundamentalist Church of Jesus Christ of Latter Day Saints. Neither the United Effort Plan Trust, nor its parent organization, the Fundamentalist Church of Jesus Christ of Latter Day Saints, have any accounting or reporting obligation towards apostates from the Church, including the Plaintiffs, or to the public at large.